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ARTICLE: Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor

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## SUMMARY:

... Two major initiatives in criminal justice are now at the forefront of legal, academic, and policy-making debates. ... Three dimensions in particular are worth further exploration: 1) "whole client" representation or holistic advocacy, 2) defender collaboration with other criminal justice stakeholders (e.g., building coalitions or lobbying to change laws and improve programming), and 3) community outreach or community service activities. ... For purposes of clarity, whole-client representation (i.e., problem-solving lawyering), defender collaboration with criminal justice stakeholders, and community-oriented defense initiatives will be discussed separately in the remaining sections even though many defender offices blend these activities. ... In addition to providing a vigorous client defense of the charges, community defenders focus ideally on root problems that manifest themselves in offender behavior. ... Harvard's CJI social worker, Cathy Neidich, says that at first she was concerned that the lawyers and law students would not value a professional perspective quite different from their own. ...

## TEXT-1:

## [\*401] INTRODUCTION

Two major initiatives in criminal justice are now at the forefront of legal, academic, and policy-making debates. The first is the "community justice" trend, which includes community policing, community prosecution, community courts, and community sentencing. n1 The second is the "problem-solving" movement. n2 This includes problem-solving policing strategies and the rise of specialized problem-solving courts such as drug courts, domestic violence courts, mental [\*402] health courts, and prisoner re-entry courts. These trends are accompanied by a noticeable shift in teaching pedagogy within the legal academy from traditional models of teaching advocacy skills to a new emphasis on problem solving. n3

Many people partly attribute the drop in crime rates in urban communities to the success of law enforcement's new community justice and problem-solving efforts. n4 In parceling out praise, three groups have received most of the credit: prosecutors, police, and judges. Conspicuously missing from this list, though, is a group that for decades has led community justice initiatives and engaged in problem-solving lawyering: criminal defense lawyers who represent those who cannot afford to hire their own counsel. In ways as extensive as they are varied, public defense providers, more than other groups, have tried to engage in innovative work outside of the courtroom to problem-solve for individuals and poor communities. n5

[\*403] "Community justice" and "problem solving" resonate well in today's political and academic debates, but the bottom line is that the *community* has not lived up to its commitment to community *justice* until it fully understands and supports the role of public defense. n6

The rich and the poor are treated differently in American courts, though it is the public commitment of the courts to treat them the same. The argument for a more generous provision follows from that commitment. If justice is to be provided at all, it must be provided equally for all accused citizens without regard to their wealth. . . . Legal aid raises no theoretical problems because the institutional structures for providing it already exist, and what is at stake is only the readiness of the community to live up to the logic of its own institutions. n7

Many public defense lawyers – including public defenders, assigned counsel and contract lawyers – are trying to live up to the dream of equal justice despite the enormous hurdles that leave most overworked, underpaid and under-resourced compared to their counterparts in the justice system. n8 Too little is known about the good work by indigent service providers. For the community to live up to the logic of its own public defense institutions, a first step is to map out the panoply of positive representation activities and institutional arrangements in [\*404] public defense, then build support for the ones that achieve equitable treatment for the poor.

To achieve this vision of equitable or democratic justice, some public defense leaders have adopted consensus-building procedures, such as team representation, to represent the interests of their clients and their families more effectively. Other indigent defense service providers have expanded their conceptions of defense lawyering by initiating grass-roots community service initiatives; while others have re-arranged pretrial procedures or redefined their institutional mission.

This Article explores an expanded conception of what it means to provide counsel to the criminally accused. As this expanded model is mapped out, however, it is important to recognize the model is grounded in the community defense movement of the 1970s. In that era, there was support for social service collaboration, problem-solving activities, and community service, but these efforts appear to have lost momentum. n9 Professor Randy Stone, director of the University of Chicago's Legal Aid Clinic, reminds defenders of past efforts to further community justice and problem solving initiatives: The idea then and now is to expand the concept of lawyering to include solving the clients' specific legal problem while also addressing, for example, social service issues and/or community issues such as police brutality, crime prevention through alternatives to incarceration, and public education. The idea, in late 80s vernacular, is that the public defender defends the public. n10

Public defense lawyers are people's lawyers. In Justice Brandeis' words, they take "the great opportunity of the American bar . . . to stand again as it did in the past, ready to protect the interests of the people." n11 The role of public defense is inherently a community-oriented job because the public defense role is designed to serve the people. The difference in today's expanding model of community defense lawyering is that criminal justice coalition-building efforts are more explicit and strategically aimed at consensus-building as defender leaders try to build institutions to support their problem-solving, community-oriented work. They see their role broadly and at the core is their recognition that protecting the interests of the people means much more than zealous courtroom advocacy. In the past decade, the U.S. Department of Justice ("DOJ") has endorsed and financially supported these problem-solving approaches and encouraged coalition-building [\*405] among criminal justice stakeholders without abandoning their core functions. n12 Innovative public defense leaders and some of their counterparts are working together to institutionalize problem solving and community service as an integral part of the defense function. n13

PDs across the nation are thinking strategically about their new roles in an evolving system and the future of public defense. They are developing new partnerships, sharing information and openly discussing the need to engage in multidisciplinary practices (e.g., hiring staff social workers or partnering with mental health experts), and occasionally initiating projects with police, prosecutors, and corrections officials to address specific problems facing communities. n14

[\*406] Here are some examples of indigent-defense providers' problem-solving approaches that aim to assist individuals and communities:

. A criminal case is closed, but the criminal defense team continues to help its client find an apartment, secure partial funding for college, and find a part-time job after he completes an in-patient drug treatment program. n15

. In 1989, a California public defender asks homeless veterans about their problems. He hears hundreds of veterans describe their fear of going to court to deal with old misdemeanor warrants. It is a vicious cycle. Outstanding warrants prevent the use of social services, which impedes access to employment and housing. An innovative defender convinces a judge and prosecutor to hold court at the homeless shelter, where they process several thousand cases annually with great success. Everyone wins—the homeless have a better chance at community reintegration by resolving their cases, and

court administrators reduce backlogs. Today, the Homeless Court started by a public defender serves as a model for other jurisdictions interested in problem solving for the homeless. n16

. A public defender and staff members lobby alongside a victim's rights group seeking legislative support for alternatives to incarceration and work release. These seemingly adverse parties both want more restitution and community-service programs to help victims, offenders, and communities. n17

. An experienced defense attorney observes that the behavior of many of her clients strikes her as odd, but she cannot identify what's really going on. She realizes that she has begun to see more mentally disturbed clients than in years past. The lawyer reaches out to a trained social worker in her office who conducts mental status exams and works to locate appropriate therapy and treatment alternatives. The social worker testifies in court hearings in order to prevent incarceration that could exacerbate mental illness and delay treatment. [\*407] Judges depend increasingly on social workers' assessments. The defense lawyer sees the advantages of social worker input while preparing cases for trial, such as early collaboration to help in plea negotiations or at trial and sentencing, and begins to work regularly as a team member with forensic social workers and interns to address a myriad of client and family problems, helping clients successfully integrate back into the community. n18

In expanding traditional institutional arrangements for providing counsel to the poor, these public interest lawyers have not abandoned their role as lawyers able to engage in traditional adversarial or trial-centered representation. Rather, by building on their zealous advocacy skills, they build community connections by leveraging the "crisis moment" of a pending criminal case and seizing the opportunity to work closely with social workers and key community members in order to resolve a client's underlying problems.

This Article maps out three major dimensions of the indigent defense function in this era of community justice and problem-solving. n19 Part I sets the context by briefly exploring basic principles of community justice n20 and the major movement toward problem-solving approaches in criminal justice circles. n21 To [\*408] contextualize today's expanding defense function, Part II sets out briefly the foundations of the right to counsel, the organization of public defense services nationwide, and forces operating in the larger criminal justice arena that have spurred this expansion of conceptual and institutional boundaries. Part III maps out a conceptual model using spheres to depict the layers of problem-solving lawyering that defenders engage in on behalf of individual clients, the criminal justice system, and the larger community – all of which envelop and enhance the traditional zealous courtroom advocacy role at the center of the defense function. Part IV is explains through examples each of this conceptual model's dimensions at the following three levels: (1) whole-client representation methods or holistic advocacy; (2) consensus-building with other criminal justice stakeholders; and (3) community engagement. Part V explains how this conceptual model has been institutionalized in some cutting-edge defense operations.

The goal of this Article is to increase awareness of community-oriented, problem-solving defenders by mapping out the ways that defenders participate in furthering equal justice for their clients and the larger system. There is a lot of activity within this model, a defender might try to: ensure that client's rights are protected and human dignity preserved before during and after a trial or plea; see that new criminal justice procedures and programs are fair; engage in public policy formation; think broadly about ways to further social welfare in the community; help build new institutions like problem-solving courts and monitor progress from a defense perspective. Even though not all public defender offices can engage at each level or build institutions that encompass this model fully, parts of the conceptual framework can be adapted to each defense operation whether it is a full-time public defender office or highly individualized assigned counsel operation.

The unanswered questions are whether defense lawyers are particularly well-suited to these tasks compared to other professionals or agencies; and, whether defenders will be able and willing to adapt their culture to these expanded (often more specialized) roles. A larger theoretical question is whether this conceptual framework is consistent with deliberative democratic theory so that the constitutional mission of equal justice is served on behalf of many, not just a few. For now, this theoretical construct simply attempts to map out different boundaries where public defenders and assigned counsel operate. The goal is to affirm public defenders and assigned counsel as equal partners in the system because they do problem-solve and they do promote community justice at many levels. Another goal is raise awareness and build support for each level of [\*409] participation so these expanded defender activities will become institutionalized in more states. If not institutionalized, the bold efforts of individual lawyers to problem-solve for clients and start community programs will last only as long as each individual lawyer remains in public defense work.

## I. TWO MOVEMENTS IN CRIMINAL JUSTICE: COMMUNITY JUSTICE AND PROBLEM-SOLVING

### A. COMMUNITY JUSTICE

A national groundswell of interest in community-oriented activities is under-way in law enforcement, prosecutorial, corrections and judicial circles. Examples of institutional reform efforts are quite extensive, but a few stand out. Community probation, community courts, and community sentencing reflect a rethinking of roles and institutional strategies in the law enforcement arena. n22 A threshold question in each of these areas, and one often answered inadequately, is, "What does one mean by 'community' when trying to understand community-justice initiatives?" Community is a universal concept pondered by jurisprudential theorists, philosophers, sociologists, and practitioners both inside and outside of criminal justice. n23 Increasing the understanding of "community" deserves more attention, but for purposes of understanding community-justice initiatives, [\*410] "community" refers generally to associative communities, n24 wherein members do not necessarily know one another. n25 An associative community exists in people's minds when they feel a part of something. n26 In the law enforcement context, communities are typically defined as groups of people who live in a neighborhood or share similar concerns, but membership can change over time as personal associations change. n27 Communities are often united by shared concerns such as crime or other social ills that have harmed the quality of life for the majority of the people living in an area. Common missions in these associative communities are to reduce crime, restore order in their members' lives, build relationships and maintain public safety.

PDs and other community activists have for a long time seen the community as the central resource to resolve public safety problems and social ills. n28 Law enforcement has shifted their attention to identify shared goals with community members in crime-ridden communities and is able to see these communities as sources of solutions not just problems. Many law enforcement leaders now exhibit a willingness to listen actively to community concerns. A new paradigm of community-based policing, and even community-based prosecution and probation, is taking hold in various forms around the country, offering citizens the opportunity to redefine and become directly involved in crime control and quality-of-life programs in their communities. The viability of life in urban America may depend upon whether order can be restored before [\*411] urban decline has progressed to irreversible proportions, whether the police are permitted to play an effective role in the process, and whether the courts will uphold order-maintenance efforts on behalf of communities struggling against the very real threats posed by disorder. n29

From a law enforcement perspective, the community policing movement best exemplifies this paradigm shift. n30 The strategy is to formulate policies that build bridges between communities, law enforcement, and courts. Law enforcement attempts to hear community concerns and, if possible, direct resources to address them swiftly. Public-private partnerships are formed to develop solutions to local crime problems based on community-oriented coalitions and mutual accountability. Tracking alongside these community-oriented policing initiatives is the emerging field of community prosecution. n31 Here, prosecutors try to build positive, long-term relationships with members of a community in a particular geographic area. n32 Community prosecution means that prosecutors enter communities, [\*412] establish offices there, get to know residents, work with community members to improve public safety and build confidence in the justice system. n33

With the development of community partnerships and concerted efforts to problem solve especially at the punishment stage through restorative justice approaches, the systemic goals shift from retribution to an attempt to restore relationships between victims of crime, offenders, and the larger community. n34 Many community leaders and law enforcement types embrace the popularized "broken-windows" theory that increases policing strategies and arrests for low-level crimes and disorderly conduct "with the goal of reducing disorder and fear in communities." n35 Other community members have begun to object to some community-policing strategies as too intrusive. n36 For example, regular police stops and searches of young black men in a community as a part of quality-of-life policing have raised concerns about the authoritarian nature of police conduct, racial disparity in policing techniques, and other objections. n37 Another legitimate [\*413] concern is that regular community contact invites opportunities for police officers to lose their professional distance and possibly violate the law. n38 Perhaps because of these new community-policing efforts, incarceration rates in minority communities have soared. n39

Some community leaders, unwilling to passively accept the escalation in incarceration rates, want more constructive and long-lasting responses like treatment programs for substance abuse and domestic violence. They are seeking alternative approaches to community justice along the lines of the restorative justice movement. n40 Because there are many voices in a community, any legitimate community justice initiative must be inclusive of alternative voices. PDs and assigned counsel play a crucial role in accessing "the other" community voices that law enforcement may not be willing, or able, to access. As one defender said, "oftentimes defense attorneys are the ones who pick up first, and most rapidly on the occasional . . . bad police officer who is consciously making [\*414] profile stops, or a police strategy by a department that may be very well-intended, but is nonetheless having a negative impact on a community." n41

From the defense perspective, those who engage in community justice movements try to identify concerns of individual clients and problems that pervade a particular group they represent. Community justice sometimes means preventing government abuse such as police harassment or police brutality, and working with community members to hold the government accountable. n42 Community justice plays out in both the criminal and civil context; for instance, ensuring that needy communities have access to government services and benefits that other communities enjoy. Thus, community justice means that communities have a voice or some impact on the way the government acts upon and within a community. Defenders are in a unique position to broker information-sharing between groups. As Bob Boruchowitz, Director of the King County Public Defender Association in Seattle, said, "The defenders are in a unique position to articulate to the government the concerns of the clients, and to articulate to the clients the concerns of the government, and be a technical advisor to both sides." n43 This, however, does not mean that the government is always willing to listen.

Police, prosecutors, or judges in community courts are primarily linked to those community leaders who make their views known. It is easier to listen to those people who "count" and who feel comfortable speaking out in a community. Communities have many voices, and those voices that are often discounted can present a valuable warning sign about deeper problems in the community. n44 Criminal defense lawyers most often hear these concerns because [\*415] of their given role and their perspective in the system. David Feige, a highly respected public defender in the Bronx, best described the value of the defense perspective when he wrote: "It's as simple as this: I care about the person I know. In most cases, the complainant is an abstraction to me. His victimization is an abstraction. My client, on the other hand, is very human and very real. It is his tears I see, his hand I hold and his mother I console. I understand my clients like no one else in the system." n45

Thus, a more complete or accurate conception of "community justice" would include the defense perspective. Community justice initiatives that are organized by police or prosecutors, organizers rarely seek out public defenders or assigned counsel to serve as equal partners. Each state is different, but on the whole, public defense leaders willing to work with law enforcement or lawmakers to problem-solve inside communities are not often invited to strategy meetings, policy making discussions, or to participate in legislative hearings unless they are very proactive about securing a seat at these policymaking tables. n46 Once at the table, these insightful and compassionate defense perspectives on "community" can become invaluable to other decisionmakers. Indeed, defenders can help other stakeholders identify personal problems facing individuals in their communities as well as provide fresh perspectives on deeper systemic problems. n47

#### [\*416] B. PROBLEM-SOLVING LAWYERING

A phenomenon related to but separate from the community justice movement is that of "problem-solving." Problem-solving skills courses are gaining popularity in professional circles and law schools. n48 Bar associations nationwide are holding seminars and discussing ways to redefine practitioners' role as problem solvers. n49 In criminal justice, it has been said that problem-solving first began in policing circles. n50 Yet, effective criminal defense lawyers for the indigent began practicing law and working to solve clients' problems long before problem-solving rhetoric became popular in law enforcement circles. n51

Problem-solving in criminal justice focuses on a specific issue or set of predicaments such as drug addiction, the mentally ill living on the streets, or domestic violence. Some problem-solving strategies target individual conduct in an attempt to change patterns of behavior that lead to entanglement in the criminal justice system. Other successful problem-solving strategies are oriented towards coalition-building among law enforcement groups, community leaders, and religious leaders to address specific problems in a community such as gun violence among youth. n52 The role of lawyers in these problem-solving activities is hard to define.

[\*417] Some prosecutors no longer see themselves as case processors but as strategic thinkers explicitly adopting a problem-solving role. n53 These problem-solving federal prosecutors envision their role as one piece of a larger puzzle that preserves their primary function, and build out from there to collaborate with non-law enforcement agencies to intervene early in resolving specific social problems. "This new perspective shifts the prosecutor's ambit of concern from any particular case or cases to the impact that a group of cases have in either a particular geographic area or particular subject matter area." n54 These prosecutors see the prosecutorial role more broadly and try to match the complexity of connections in the criminal world with remedies that cut-across the traditional demarcations of legal and organizational responses. n55 Problem solving involves gathering information, making strategic connections, and changing the culture within an office to define a broader role for the attorneys and staff. Information-gathering and collaboration is key. n56 For prosecutors, this role as coordinator among non-traditional groups to address non-law enforcement aspects of a problem does not come easily. n57

Problem-solving is also popular with government leaders, mainly because it is seen as a movement towards reducing recidivism. n58 For example, Former [\*418] Attorney General Janet Reno favored seeing lawyers as problem-solvers. n59 Defenders of the indigent see problem-solving as an integral part of their role in providing counsel, but because of the lack of resources, large caseloads and little support from outside the indigent defense world, most have been limited in what they could do for solving clients' underlying problems. n60 The criminal justice lawyer as problem-solver is a ripe area for further study by academics and practitioners interested in problem-solving and will provide an untapped source of rich data for a field that has largely been ignored. n61

Problem-solving efforts further community justice as a whole. When prosecutors, judges, police, probation officers, and defenders coordinate to address the underlying problems facing individuals charged with crimes, the collective impact of helping these individuals in dealing with root causes will be increased public safety and reduced fear for the community at large. In time, individual problem-solving can effect systemic changes. For example, problem-solving courts are said "to improve case outcomes for parties and systemic outcomes for the community at large." n62

Defense lawyers have been, and continue to be, active leaders in problem-solving for their clients while they also ensure community justice by holding the government accountable and providing other community services. A conceptual model further explores the variety of ways that indigent defense service providers engage in both community justice and problem solving enterprises that enhance the traditional role of zealous representation.

## [\*419] II. COMMUNITY JUSTICE AND PROBLEM-SOLVING LAWYERING IN THE INDIGENT DEFENSE WORLD

To contextualize the problem-solving and community justice initiatives in indigent defense, the next section explains how the traditional right to defense counsel was conceived. This is followed by descriptions of how defender systems are organized and the major changes in criminal justice that affect the defense function today.

### A. BACKGROUND OF THE RIGHT TO COUNSEL

Contrary to popular opinion, an accused's right to appointed counsel is not an express constitutional right. Although the Sixth Amendment states that in all criminal prosecutions the accused shall "have the assistance of counsel for his defense," n63 it was not until the 1963 ground-breaking case of *Gideon v. Wainwright* n64 that the Supreme Court required state courts to provide counsel for those who could not afford a lawyer. In 1972 in *Argersinger v. Hamlin*, the Supreme Court further held that due process requires states to provide defense counsel to indigent people charged with misdemeanors or felonies that involve possible imprisonment. n65 *Gideon* and *Argersinger* did not mandate how defense systems would be organized or funded. Since then each state has defined the right to counsel through its own respective constitutional provisions, judicial opinions, and legislation. n66 Consequently, there is no single system or model that is intended to fulfill the right to counsel at the state level. Nor are there any uniform standards. n67 Too many defenders still operate with too few resources and in scandalous situations. "Making *Gideon* a formal right only, without ancillary funding requirements, has produced a criminal process that is, for poor defendants, a scandal." n68 Nevertheless, a variety of state indigent defense [\*420] systems with assorted strengths and weaknesses have emerged over the past forty years.

### B. ORGANIZATION OF DEFENDER SERVICES

The most typical way defenders are organized is through public defender ("PD") offices with full-time attorneys and staff in statewide or local offices. n69 PD offices are either public entities or private, non-profit organizations. But not every state has a system that includes a PD office. n70 A second popular method of providing the right to counsel is through case-assignment to private counsel, typically by local judges who select lawyers from the private bar. n71 A third model is a contract system under which a state or local authority enters into a contract between an individual lawyer or group of lawyers (non-profits or local bar) to represent a specific number of cases within a negotiated fee structure. The contracts are usually awarded to the lowest bidder, which has caused serious ethical concerns in light of case overloads and lawyer incompetency. n72 Most state indigent defense systems are a combination of these models—a "hybrid" defender system. A hybrid system provides a state with, for example, PD offices in populated urban areas and an assigned counsel system in more rural areas. The DOJ determined in 1966 that the most prevalent hybrid was a combination of assigned counsel with PD offices. n73 (The discussion that follows below, describing a model of problem-solving defenders in the community, overwhelmingly reflects the outreach activities operated by PD offices, not assigned counsel or contract lawyers.)

The increasing numbers of offenders seeking the services of PDs have no doubt also affected the role of defenders, but

in ways that have not yet been determined. The exact number of defenders representing the indigent accused nationwide through a PD, assigned counsel, or hybrid system is unknown. Nor is there current information about defender workloads, policies, and staffing for indigent defense services. The most recent DOJ report states that approximately three-quarters of state prison inmates and about half of federal prison inmates [\*421] received publicly provided legal counsel. n74 The DOJ's Bureau of Justice Statistics is currently gathering national data through a National Survey of Indigent Defense Systems to be released in early 2001, which will measure how states and localities provide legal services for indigent criminal defendants, as well as the caseloads, related costs, policies and practices of PD systems. n75 Ten years ago, state and local governments spent approximately \$1.3 billion on defender services for the indigent, but this figure is significantly higher today. n76 In comparison with the detailed information available about police and prosecutorial functions throughout the justice system, the lack of a concise accounting of how the defense function operates hampers effective policy making and budgeting for indigent defense services. In the last decade, many political and policy changes have impacted criminal justice relationships and responsibilities. In the next section, I outline some the effects of these changes on public defense services, with the caveat that a thorough documentation and analysis of these phenomena has yet to be done.

### C. FORCES AFFECTING THE DEFENSE ROLE

Since the *Gideon* decision, legal academics along with members of state bar associations, the DOJ's Bureau of Justice Assistance, the American Bar Association, and the National Legal Aid and Defender Association ("NLADA") have debated the indigent defense crisis in American society and sought change. n77 Several changes within the criminal justice system have affected the defense role. n78 Policing strategies such as community policing, combined with law-and-order programs such as the war on drugs, police sweeps, and arrests for misdemeanor "quality of life" crimes have resulted in increased misdemeanor arrest rates and record-high incarceration rates for low-level offenses. n79 Lawmakers [\*422] continue to authorize new prison construction, which in turn provides an increased number of jail spaces. n80 Stricter national immigration policies have also been generating change in criminal justice system procedures. Even minor criminal convictions today can have a serious impact on a client's immigration status, which defenders must keep in mind throughout the whole process, whether they are preparing for trial or a plea bargain and sentencing hearing. n81 Although the popular picture of a defense lawyer is that of a trial attorney, this image is increasingly contrary to reality of the role that defenders play in the system. Most cases do not proceed to trial; a vast majority, over ninety percent of offenders plead guilty. n82 Under the strain of enormous caseloads and sentencing guidelines, defenders understandably spend the bulk of their time engaged in plea bargaining—a process that, if properly discharged, can be effective at addressing a range of the problems facing an offender. The expansion of prosecutorial power through the enactment of sentencing guidelines has impacted the defense function because, in effect, prosecutors now allocate punishment through their charging decisions. With more arrests and mandatory minimum sentences, n83 more accused plead guilty, rather than run the risk of longer jail sentences if they exercise their right to trial and reject a reduced-sentence plea offer; indeed, if counsel does not adequately advise the client of the risks or desirability of the plea a court may find it amounts to a constitutional violation of ineffective assistance of counsel. n84

[\*423] The nature of the problems indigent clients are bringing to their lawyers' doors is complex and demands more sophisticated legal and social service advice. Most of these clients cycle through their lawyers' offices as a result of deeper social problems and, most significantly, the failure of other social services to address their problems that include unemployment, mental health, addiction, and alcohol abuse. n85 Nevertheless, most defenders want to help their clients in significant ways but are neither trained nor equipped to address adequately social-service issues. They recognize the need to bolster or expand problem-solving resources and community-outreach activities to assist clients before, during, and after the traditional adversarial trial process. Consequently, effective defenders look for creative alternatives and reach out to other professionals like social workers and mental health experts to help their clients.

One problem that merits special attention is the plight of the mentally ill who are charged with crimes. Defenders are at the front line in dealing with mentally ill clients and, while continuing to provide counsel as their ethical duties' require, should seek a public health response rather than a criminal justice response. Since deinstitutionalization, n86 more mentally ill people are living outside of mental institutions and are arrested for low-level non-violent offenses. n87 The mentally ill are filling prisons and jails in record numbers, a phenomenon which some refer to [\*424] as "the criminalization of mental illness." n88 Defense lawyers report that they have seen a marked increase in mentally ill clients over the past two decades. n89 The exact numbers of mentally ill persons living on the street are unknown. n90 Over three-quarters of a million severely mentally ill people—more than the populations of Baltimore or San Francisco—who would have been hospitalized forty years ago are living in the community today. n91 Indeed, the closure of state mental

institutions and enactment of new federal entitlement programs has put record numbers of severely mentally ill persons into communities without getting the necessary care or monitoring. n92 State and local social services are overburdened, so the criminal justice system has become the primary legal structure to deal with the mentally ill. Los Angeles County jail, for example, serves as the nation's largest mental institution, holding in custody on an average day between 1,500 and 1,700 inmates who live with severe mental illness. n93

[\*425] The criminal justice system, and the defense function in particular, have become the catch-basin for the breakdown of social services inside communities. More public-defender clients are in need of effective treatment programs, and these clients also face the serious risk of longer sentences if they proceed to trial under the traditional model. Cumulatively, all these changes in criminal justice laws and social policies push criminal defense lawyers to confront clients' problems beyond simply the facts of the pending case. Today, defense leaders continue to build upon their long history as community defenders by engaging in creative collaborations to address the negative impact visited upon their client community.

### III. A VISUAL MODEL OF THE EXPANDED INDIGENT DEFENSE FUNCTION

At the second National Symposium on Indigent Defense 2000, Former Attorney General Janet Reno stated that a competent defense lawyer, if possible, will try to be an effective trial lawyer and an effective problem-solver by addressing the problems that caused the crime in the first place. n94 Nationwide, defense lawyers who represent the poor are more open to seeing how new laws and policies have impacted poor communities and those arrested. n95 Defenders have not been passive recipients of new laws and policies but have become active [\*426] in community activities and engaged in their own public policy initiatives. n96 Rather than seeing themselves as "the punching bags of the criminal justice system," n97 these defenders work to protect their traditional roles of representing the accused and holding the government accountable in prosecutions while expanding their activities in other circles. They partner with community leaders to solve problems inside their clients' communities.

Defender offices have begun to institutionalize this problem-solving and community-oriented work. Their focus has shifted to become more active in the democratic process by increasing their political involvement, consensus-building with other groups that may be unlikely allies, and trying to secure a place for the defender voice at policy-making tables. n98 They engage in direct lobbying on specific criminal justice issues and organize public education campaigns. n99 As a last resort, some defender operations have initiated reform litigation to secure more institutional resources for public defense such as funds to hire more lawyers, investigators, and staff. n100 All of this activity reflects several dimensions to the legal function.

Three dimensions in particular are worth further exploration: 1) "whole client" representation or holistic advocacy, 2) defender collaboration with other criminal justice stakeholders (e.g., building coalitions or lobbying to change laws and [\*427] improve programming), and 3) community outreach or community service activities. These three dimensions work together as a model of how indigent defense service providers today envelop their traditional zealous advocacy roles within far-reaching community-centered activities such as school education programs, anger-management classes, and anti-violence initiatives. Community engagement cuts across all of these dimensions. Defense lawyers who are engaged in these various levels of community justice and problem-solving better serve clients and families through team representation and robust community-outreach activities. Defenders have traditionally pushed the boundaries of trial advocacy outward by getting involved in social justice projects and public policy efforts that affect their clients' communities. In this broader role, these public service lawyers are in fact serving their clients more effectively by doing so, and, by addressing each client's problems, they also help the larger community.

The following model (Figure 1) is an aid to visualize how problem-solving defenders operate in many circles while still preserving core advocacy skills. They address clients' underlying problems by working with social workers and engage in multi-disciplinary practices. Some defenders see their role in one dimension, the core of which is trial advocacy. Other defense service providers would like to engage in more of these activities on the outer edge but are severely limited by their resource capacity and lack of political support. Other defenders have a chameleon-like role as they move in and out of each of these areas depending on the political climate or available resources. n101 Therefore, the lines dividing each of the model's dimensions are broken in order to represent how defense lawyers and their staff move in and out of the different areas of activity.

The remainder of this Article describes each of the models' different dimensions of problem-solving lawyering and community service that indigent defense lawyers are engaged in today. For purposes of clarity, whole-client representation

(i.e., problem-solving lawyering), defender collaboration with criminal justice stakeholders, and community-oriented defense initiatives will be discussed separately in the remaining sections even though many defender offices blend these activities. The final part describes three offices that have formally institutionalized each of the dimensions of this triumvirate model.

#### IV. A VIEW OF PROBLEM-SOLVING COUNSELING AND COMMUNITY OUTREACH BY SOME MODERN DEFENDERS

The broad paradigm of the defense function illustrated above entails thinking beyond case processing and adopting a problem-solving approach. In addition to [\*428] providing a vigorous client defense of the charges, community defenders focus ideally on root problems that manifest themselves in offender behavior. One PD captured this sentiment in the following way:

For our clients, the criminal problems are the least of their problems. They have many other problems. Attorneys are lawyers *and* counselors. We place an emphasis on counseling clients along with litigation strategies. In the counseling role, whether convicted or not, we owe our clients some services. And beyond that, we owe their family some services. So we take a very broad view of what it means to be a legal counselor. n102

Reconceptualizing the job of counsel in this way changes the social, legal and political roles that defenders play within the community, the criminal justice [\*429] system, and, most importantly, how one interacts with a client and his or her family.

##### A. WHOLE-CLIENT REPRESENTATION OR HOLISTIC ADVOCACY

Broadly interpreting the role of "counsel" is a distinguishing mark of community-oriented, problem-solving defenders. To counsel means much more than investigation, trial preparation, or plea-bargaining. Counseling goes well beyond fact-specific courtroom advocacy because the whole client condition is crucial, not just case resolution. Counseling or coaching in this way requires empathy and is a skill that defenders can develop. n103 Social workers and other experts who work closely with defense lawyers often teach the lawyers interviewing and counseling skills. n104 In a multi-disciplinary practice, defenders work regularly with trained social workers who assist in problem-solving for the defense at all stages from initial client interviews to securing appropriate sentencing alternatives. In the problem-solving mode, a defender views a case in the context of a client's life and larger community problems that resulted in criminal justice intervention.

In the contemporary idiom, this approach to lawyering is called "holistic representation." n105 This term refers to whole-client representation from the initial stages of the case and sometimes even after release. The primary goal of such contextual advocacy is to use the trauma of a criminal arrest to improve an accused's life conditions and thereby reduce recidivism. Such representation begins when a defender examines a client's internal problems, such as personality disorders, mental illness, addiction, or anger management problems. A holistic approach next considers the offender's family situation, looking for sources of these problems. Whole-client counselors try to address these problems, including abuse and other family dysfunction, to prevent future breaches of the law and to promote integration back into the community. For example, at the Georgia Justice Project, a privately funded holistic defender office in Atlanta, the representation role never ends because everyone in the office is committed to helping clients [\*430] with all aspects of their lives to reduce recidivism by "embracing the person and helping them make these life changes through zealous advocacy, continuing counseling, and employment and job training." n106

Family can sometimes play a positive role in helping client's adjust behavior or help with designing an effective case disposition for which they can provide emotional support. Defenders and courthouse denizens are noticing how more family member fill courtrooms and hallways in city courthouses. In New York City, for example, there are reports that the stream of traffic through the lower courts is made-up of mostly families, offenders, and defense lawyers say they have seen a different type of family arrive in recent years as the city's quality-of-life crackdown continues. More working-class families who have never before had brushes with the law arrive in shock after a loved one is arrested and jailed overnight for a minor offense, like driving with a suspended license. n107 Not all these offenders can be represented by a lawyer who has an expanded notion of what it means to provide counsel. In an ideal defender world with adequate resources to represent clients in a variety of ways, an array of problem-solving strategies would extend to counseling a client, assisting with educational or employment needs, and counseling the family on government assistance and other programs available to them. To be effective in all these dimensions lawyers have to build strong coalitions with other professionals.

##### 1. HOLISTIC ADVOCATES RELY ON NON-LAWYERS

One might ask: How are defenders able to engage in holistic advocacy when it is well-known that a large majority of

defender offices are generally underfunded? Institutionalized whole-client counseling programs rely not only on variations of multidisciplinary practices but also emphasize the value of community participation. This conceptual approach reinforces strong links that legal service providers have to communities, which have been in evidence for decades, even before community policing and community prosecution came into vogue. For example, James Hennings, Executive Director of the Metropolitan Public Defenders Office in Portland, Oregon, has consistently relied on the services of people in his community to support Portland PDs in trial preparation, [\*431] plea negotiations and at sentencing hearings. n108 Liaisons between trial lawyers and social work programs are critical. The non-lawyers in the PD office identify programs that are effective and build contacts with people in other disciplines. Portland PDs hire Legal Assistants and Outreach Coordinators from the community to help expand the scope of services and find alternatives in providing defense representation: We think that everyone can be a Legal Assistant with the right training and support. We have had newspaper reporters, nuns, bartenders, college professors, high school drop-outs and homemakers work in our office as Legal Assistants. . . . Our Public Defenders are pretty aggressive about bringing Outreach Coordinators and Legal Assistants to testify at sentencing about effective alternatives available for our clients. They create lists of programs, work to develop programs, and spend lots of time in meetings with community members. One of the most important links is outreach to religious communities who provide much support. We find mentors from local churches to work with our clients, which judges and court administrators find appealing. n109

Holistic representation recognizes, for example, that non-lawyer professionals can identify substance abuse problems and work closely with the accused on resolving personality problems or addictions. Holistic representation is also effective when defense lawyers represent juvenile offenders. Rethinking the way juveniles are treated in the criminal justice system is a particularly important issue for defenders. The Youth Advocacy Project ("YAP") in Boston also runs an innovative community-oriented program to help youthful offenders. In juvenile court, YAP lawyers engage in a multi-disciplinary approach to representation. Teams of lawyers, social workers, a psychologist, and a community liaison problem-solve for young offenders. n110 YAP defenders make a concerted effort to address both pending criminal cases and other life circumstances such as physical and mental health, schooling and family support. n111 Their work has received broad community approval and national attention. n112 For both juveniles and adults, holistic advocacy only works if community social services and treatment programs are integrated into case representation and long-term problem-solving strategies. A few progressive-thinking defenders articulate part of their defender [\*432] role as a "crime fighter" because their problem-solving efforts and community service helps to reduce client recidivism. n113

## 2. DEFENDERS PROBLEM SOLVE FOR CLIENTS AND COMMUNITIES THROUGH ANGER MANAGEMENT AND ANTI-VIOLENCE INITIATIVES

Innovative indigent defense service providers are thinking strategically about ways to improve public safety by reducing recidivism and community victimization. The Miami-Dade County, Florida Public Defender's Office, for example, has been running a successful anti-violence initiative ("AVI") with defender-community collaborations designed to help clients lead law-abiding lives. n114 The initiative, which has become a model for other public defense operations, continually develops diversion programs, sentencing options, coalitions with other social service organizations, and expands access to effective treatment for clients. n115 AVI improves public safety and reduces the number of victims in the community by expanding the problem-solving role of PDs. n116 The Dade County program is based on a public health model that incorporates social services and treatment programs into client representation. n117 Such an approach restores balance and improves the decision-making of an accused and sometimes extends to their families. n118

Anger management courses are increasingly popular in court dispositions. n119 In addition, other programs that aim to reduce recidivism include a self-esteem program, substance abuse treatment, literacy education, and emotional distress [\*433] counseling. n120 Anger management and impulse control programs can sometimes be effective for mentally disturbed clients. Working closely with forensic social workers who conduct basic mental status exams and non-official multi-axial assessments, defenders are better able to "counsel" mentally ill clients and to find effective alternative treatment dispositions. n121 They can help identify potentially violent clients who may harm themselves or others in the community due to the lack of adequate counseling, treatment or drug therapy. n122

It is important to emphasize that this focus on community safety is not done at the expense of clients' defense, but rather also considers long-term benefits to the alleged offender. Indeed, this defender representation model furthers restorative justice ends. A client who receives substantial help addressing the root of his or her problems is less likely to be a repeat offender or to commit a more serious offense; and most importantly, has a much better chance of restoring positive relationships within his or her community. Innovative defenders are not abandoning *Gideon* or their constitutional

obligations to provide zealous representation; rather, they understand that grass-roots community support is vital in dealing with issues of justice as well as individualized defense.

### 3. OUTER BOUNDARIES OF HOLISTIC REPRESENTATION: HELPING OFFENDERS GET BACK TO WORK

Defenders who negotiate cases using creative problem solving strategies and are open to working closely with other professionals improve the chances of restoring the client to membership in the community. Some defenders tackle a client's life-problems such as the need for education and gainful employment. In a problem-solving approach, a few defender offices have forged links with government and non-governmental organizations to improve their clients' [\*434] employment prospects. n123 For example, the Washington Defender Association, a membership group of defender offices and assigned counsel, focused on the problem of impoundment of vehicles operated by their clients who were cited for driving with suspended licenses. The association in collaboration with other government representatives developed a plan outside of formal criminal proceedings for drivers charged with driving without a license so that their clients can eventually earn back their drivers licenses and seek gainful employment. n124 At first glance, this may seem like a minor problem affecting only a few people, but the impoundment issue reflects a deeper systemic problem that some refer to as the "criminalization of poverty." n125 For example, in some traffic citations in Seattle, specifically Driving With License Suspended 3rd Degree ("DWLS3"), African Americans lose their licenses and have their cars impounded much more often than whites. n126 This hurts their employment status, their families, and their quality of life. With consensus-building efforts organized by the association, groups rallied to provide support for the Seattle coalition's proposed alternatives for defendants such as diverting cases to community service plans rather than fining people who cannot afford to pay. n127

Another example of problem-solving through holistic representation are the defense lawyers who assist clients in dealing with criminal records for minor offenses that prevent them from seeking job opportunities. A common problem among thousands of unemployed individuals with prior convictions is that they [\*435] fear (or are technically barred from) seeking specific employment opportunities. To solve this problem, in California, the Kern County Public Defenders decided to set up a program to provide assistance to expunge criminal records of former misdemeanants. n128 Public defense lawyers file successful petitions for expungement of prior convictions which allows clients to check the "no" box on employment applications that inquire about prior convictions. n129 The program has been received well by judges, court administrators and community members. n130 To date, the Kern County Public Defenders have completed over 600 expungement petitions, and a high percentage of these clients have returned to work. n131 Volunteer PDs also run a program in Sonoma County to help welfare recipients expunge their criminal records or apply for a certificate of rehabilitation to qualify for jobs. n132 These individual problem-solving strategies and the positive community relations fostered by these employment assistance programs directly assist clients and improve the professional image of the Kern County and Sonoma County Public Defender's office, which in turn increases public support for the defense function in these California communities.

Empirically measuring the outcomes of whole-client representation, however, is extremely difficult. The Kings County Criminal Defense Division of the New York Legal Aid Society was awarded a federal grant to target drug-related cases and to evaluate the effects of enhanced resources upon case dispositions. n133 The ensuing Community Defense Project focuses on arraigned cases within a given geographical area. n134 The Project has demonstrated that Legal Aid defenders and their support staff have achieved many favorable dispositions by identifying clients' underlying problems and then referring clients to local community [\*436] organizations with which the defenders have cultivated relationships. n135 This consensus-building project has also resulted in the assignment of Legal Aid lawyers to work with young adults at Red Hook Youth Court and to staff the newly opened Red Hook Community Justice Center. n136 All of these measures are problem-solving efforts and ultimately crime prevention efforts. Measuring crimes that do not occur is difficult, if not impossible. But this difficulty in providing true empirical data has not dissuaded some state and federal entities from financially supporting defense leaders' efforts to expand the role of counsel outside courtrooms and encouraging them to collaborate with other professionals. These valuable lawyering skills are taught in law schools primarily through clinical programs.

### 4. CLINICS TEACH MULTI-DISCIPLINARY PRACTICE: THE LAWYER-SOCIAL WORKER TEAM APPROACH TO PROBLEM SOLVING

Clinics in American law schools were designed to serve needy communities, and clinics play a major role in teaching future lawyers about the value of multi-disciplinary law practices to better-serve clients in those communities. Despite the ongoing debate in the ABA about the risk of lawyers losing control over their cases, there is great value in teaming up with other licensed professionals when representing clients' multifarious interests. n137 Lawyers are slowly realizing

that with changes in all areas of law practice, they need to engage in more interdisciplinary practices. n138 Law schools are teaching students how to develop teamwork skills to solve clients' problems with other professionals. For example, the Criminal Justice Institute ("CJI") at Harvard Law School is one of the few criminal justice clinics in the country with a paid social worker on staff who works with clinic students and their clients. Harvard's CJI social worker, Cathy Neidich, says that at first she was concerned that the lawyers and [\*437] law students would not value a professional perspective quite different from their own. n139 She explains how important it is to help law students understand that there is value in seeing part of the lawyering role as one that addresses client's non-legal issues directly, an observation that can sometimes overwhelm law students and lawyers. n140 (For some, it is easier to focus only on the legal aspects of the case rather than trying to unravel the complex web of problems in a client's life). When a client tells his or her story to the student, a social worker can help parse out the critical problems, objectify them, and make room for more focused legal representation. Neidich explains the value of teamwork between the social worker and law student in creating an effective problem-solving strategy:

I consult with students on cases where adult or adolescent clients may exhibit symptoms of mental illness, substance abuse, school adjustment problems, family crises, or where there is need for other concrete services such as housing, food, or other concrete services. Students are often overwhelmed with the complexity of the problems their clients face, including psychological, medical, or situational difficulties, many of which impact on the legal case. Having social worker on staff - someone who is familiar with addressing such difficulties and who is available to assist students and clients alike in developing a strategy to cope with them - has been an essential element of our work here at CJI. n141

CJI teaches law students that other professionals often share missions and deep commitments to the client population. Neidich insightfully explains that the law clinic setting is a place where students try on their new role of lawyer and professional. n142 Many can be rigid in wanting to divorce themselves from client problems and instead focus on "self-as-lawyer" or "self-as-performer" in preparing a case for trial and resist anything near "self-as-social worker." n143 Unfortunately, law schools send a message in general that this latter category is somehow below the lawyering role rather than on par. As law practice in every area grows more complex, it is hoped that law students will learn to value other professional advice in order to supplement their own skills. The clinic instructors and social workers teach that "in offering a broader, more comprehensive range of services, we are better able to serve the law students, the clientele and the community." n144 This is an important message for public interest lawyers as well [\*438] as private practitioners who may not fully appreciate the value of embracing multi-disciplinary practices and problem-solving strategies that actually help clients beyond the case resolution.

In short, all of the holistic advocacy approaches described above rely on social service professionals working closely with lawyers to advocate on behalf of clients in every stage of the criminal justice process. It is very difficult to change the culture inside a traditional defender office, n145 but these multi-disciplinary practices have deeply strengthened relationships between lawyers, social workers, and other social service actors. The internet has become a source of connections and support for this multi-disciplinary bridge-building and information-sharing. n146 All of these personal links that expand the defense role and build consensus with new partners advance community justice. Problem-solving collaborations that spread into all areas of the criminal justice system impact perceptions of the defense function. This, in turn, encourages support for other collaborative experiments with unexpected allies or unlikely partners in criminal justice.

## B. DEFENDER COLLABORATION WITH OTHER CRIMINAL JUSTICE STAKEHOLDERS

The next dimension of the conceptual model [*see* Figure 1] centers around the collaborative efforts of PDs and assigned counsel with other criminal justice stakeholders. Nontraditional coalitions have been formed to start programs or make legislative successes happen.

### 1. DEFENDER COLLABORATIONS: PUBLIC POLICY MAKING, LOBBYING, AND LAWMAKING ON JUSTICE ISSUES

Defense service providers increasingly see a role for themselves in criminal justice policy making, particularly in light of past legislative reforms that have raised incarceration rates and limited the judges' sentencing discretion through mandatory minimums, three-strikes laws, and other policies discussed above. n147 This is not a traditional role for defenders of the indigent. Traditionally, prosecutors have been far more active in lobbying and policy making than defense lawyers. Over the past two decades, however, PDs and assigned counsel have recognized that the defense perspective needs to be more visible in policy [\*439] making and have begun testifying at legislative hearings at both state and national levels. n148 Some defense lawyers have become valued participants in policymaking and public education because they provide unique perspectives to justice debates as a result of working closely with clients and their families. n149

Defender leaders are learning how to communicate more effectively with messages that can be heard in policy-making circles. Their goal is to be more effective at communicating their role both inside and outside the criminal justice system, and they are therefore learning effective communication skills. n150 Developments in state and federal legislation, from mental health laws to three strikes laws, has had a negative effect upon their clients and their families, so defenders increasingly acknowledge that to be effective advocates for their clients and their communities they need to become proactive speakers in the political process. Engaging legislators and other criminal justice policy makers is a necessity because their decisions affect the communities defenders represent. Because defenders understand these communities and have special links to the problems facing individuals and families, the defender message can be powerful once they defenders to articulate their message and become part of the political process they once avoided.

Astute defender leaders understand that in most societies, finding the right messenger to lobby for reform can be even more powerful than the message itself. The Minnesota Board of Public Defense, for example, hired a former ten-year legislator as its Government Relations Manager whose job it is to monitor lawmaking and lobby his former colleagues. He works closely with a team of defenders who strategize and then lobby on criminal justice issues during each Minnesota legislative session. n151 Defenders nationwide have begun to identify political allies to show how three strikes laws and mandatory minimums have long-lasting negative impacts on clients, communities and government budgets. They have also introduced issues of domestic violence into the national political debate. Juliana Humphrey, Chief Deputy of the San Diego Public [ \*440] Defenders, for example, serves on the Domestic Violence Council and as chair of Council's "Treatment, Evaluation and Monitoring" committee, a group that has oversight over court-ordered, mandatory domestic violence programs. n152 In those capacities, the San Diego Public Defender office can lead the effort to evaluate and monitor the success of these domestic violence programs.

Other defender operations are building networks and important coalitions to monitor policies, laws and other political activities that may affect their clients. n153 For example, the Boston Youth Advocacy Project ("YAP") defenders have teamed up with the Children's Law Center of Massachusetts to create the "EdLaw Project" in order to work more closely with parents, youth workers and other lawyers to improve schools and educational advocacy in Boston. n154 YAP has recently been the catalyst for the founding of the Roxbury Network, which is intended to be a network of youth and community development agencies in Roxbury to promote issues and monitor legal developments. n155 The YAP staff has also coordinated the creation of an educational advocacy coalition, consisting of all of the major educational advocates and trainers of advocates in the Boston area. n156 PDs around the country offer educational programs to children, youth workers, parents and lawyers on juvenile criminal laws and other legal literacy courses. n157 Some defenders see their lawyering role as one that should assist lawmakers directly in drafting legislation that can help clients and improve the [ \*441] system. For example, progressive defenders in the San Diego Public Defender supported a new law that provides for GED or equivalency training as part of probation for their clients. n158 The office is assisting in drafting the local policy regarding the new law and is actively lobbying to begin its implementation. The San Diego Public Defenders among others now conceive of legal representation quite broadly and proactively participate in enacting new laws that may improve individual client's lives.

## 2. JUDICIAL COLLABORATIONS: DEFENDERS IN PROBLEM-SOLVING COURTS

Community-oriented n159 defenders not only bring a different voice to legislative and policy deliberations but have also become active participants in the movement to create problem-solving courts. These non-adversarial courts include drug courts, n160 mental health courts, community courts, n161 domestic violence courts, gun courts, and re-entry courts. n162 Variations include traditional community courts and indigenous tribal courts such as Peacemaker Courts in American Indian Nations, which can co-exist with other formal, more contemporary courts. n163 Although there are no trials in today's problem-solving courts, the overarching goal is not to dispense "quick justice." Rather, it is a relationship-building [ \*442] process between the offender and a judge. Traditional courts that fall within the traditional adversarial system co-exist with the rising number of problem solving courts. n164

Today's model of problem-solving courts began with the creation of the Dade County Florida Drug Court and has now spread nationwide. n165 The Portland Drug Court opened in August of 1991 as the third drug treatment court in the country, and it remains one of the most successful courts in operation. n166 It began because judges, prosecutors, and defenders were fed up with the same people constantly rotating through the traditional court. James Hennings, Executive Director of the Metropolitan Public Defenders Office in Portland said, "I had one client that went through eight times in one year." n167 In spite of this revolving-door justice, Hennings and other PDs were reluctant at first to participate in the creation of the Portland drug court.

I had to be dragged in kicking and screaming to participate in the drug court. . . . I can say the drug court is going really well for the past nine years, and it is the best thing I have ever done professionally. Six-hundred and fifty people a year enter our drug court and we know we have an impact on people's lives. About one-third graduate, one-third fail, and one-third disappear; but, even for those that fail and go to prison, we have seen a marked decrease in drug use and level of criminality. n168

From the inception of the special court, the PD plays a critical role in establishing drug court procedures such as a two week opt-out option for offenders. The offender can go directly into treatment with no guilty plea and, instead, stipulate to everything in the police report. n169 If the offender chooses to opt-out after two weeks the case proceeds to a hearing on the stipulation in the traditional court. n170 This procedural option—which most drug courts do not have—has increased buy-in from other defense lawyers. Like James Hennings in Portland, Mark Stephens, the elected District Public Defender for Tennessee, [\*443] also voiced serious reservations about participating in the new drug court. He, too, ultimately found it to be a rewarding experience and helpful in dealing with drug problems among clients. n171 These defenders note how important it is for the defense to have a voice at the table when planning and implementing a drug court or any other problem-solving court. n172

Another unique problem-solving court began when the San Diego Public Defender office took the lead in creating the nation's first Homeless Court. n173 The goal was to help resolve criminal justice problems that exacerbated other problems for the homeless. n174 These defenders reach out to the homeless by going into shelters to conduct interviews and then represent the homeless in court proceedings that are held inside the shelters. n175 In the homeless court, problems are rarely too small or insignificant for the court to address if a client cares about them. Defender, judge and prosecutor dispose of low-grade warrants that keep these men and women from progressing to jobs. n176 This successful program aids court administration and assists people who fear entering the courthouse.

The problem-solving courts that have been the most politically and institutionally acceptable have involved defenders in the design and operation, yet each new court places new demands on defense counsel. These specialized courts or problem-solving institutions demand that defenders broaden their counseling skills as well as develop their negotiation skills, especially when enlisting the help of other professional organizations in the community.

### C. COMMUNITY OUTREACH, COMMUNITY SERVICE, COMMUNITY EDUCATION

The outer dimension of the triumvirate model [see Figure 1] centers around community, and how defenders interact within or rely upon it. Public defense lawyers who have an expanded understanding of their role see themselves as integral parts of a community. They see their role as one that furthers community welfare in a variety of ways. Community service activities and community education programs are the main methods defenders use to connect with the larger communities.

[\*444] An oft-overlooked source of power that helps defenders move into these other dimensions of the model is their connections to the community. PDs across the nation have had longstanding relationships with clients, their families, religious leaders and other community leaders. James Hingeley, the Public Defender for Albemarle County and the City of Charlottesville in Virginia states that his office stays connected to the community through the Citizens Advisory Committee. This Committee is unique in Virginia because there is government representation and other stakeholders who serve on the committee. n177

Recall Lenny Noisette's words: "For every member of the community who is a victim of crime, there is an accused person who has a family in the community." n178 These longstanding connections to communities and intimate knowledge of the problems that plague them are valuable sources of information and creative possibilities. Defenders must relay information to stakeholders who are setting policies that affect communities. Indeed, it makes sense for judges, police, and prosecutors to invite them to the policy-making tables. Defenders have special assets to provide, which include their community connections to other voices perhaps not often heard, alternative perspectives on the justice system, and special lines of communication that are different from police or prosecutors' perspectives. n179 The defender links within a community should be tapped in order to bolster the positive aspects of these new community justice and problem-solving efforts and to help eliminate the bad. In local coalition-building efforts, defenders have also found that faith-based communities and religious leaders carry considerable influence and are often willing to work on collaborative projects with police, prosecutors, and defenders to implement programs that help their communities. n180

#### 1. DEFENDERS ENGAGE IN PUBLIC EDUCATION

Advanced public defense offices now engage in community outreach programs. In particular, they push the defender

boundaries towards innovative community education programs. Defenders are teaching in local public schools, [\*445] community centers, senior citizen centers, jails, and local colleges. n181 Another form of community education program initiated by defense providers focuses on local college students and professionals from other disciplines who encounter the defenders' clients in the regular course of their professional work. In California, for example, some Sonoma County PDs conduct in-house training sessions for the medical staff of a local acute care mental health facility. n182 They teach about the rights of the mentally ill and proper legal procedures governing involuntary patients. n183 At the same time, other Sonoma PDs teach classes on a volunteer basis in the Administration of Justice Departments at the local Santa Rosa Junior College or Sonoma State College, where they try to bridge the gap between academic discourse among collegiates and criminal justice in practice. n184 Increasing numbers of PDs commit hours of volunteer time teaching in local schools, community centers and senior centers. Many defenders and social workers have enlarged their circle of support by building professional relationships with existing education programs and community employment agencies. n185 Defenders, however, are well aware that they need full legislative and financial support to institutionalize these educational and employment training programs.

## 2. DEFENDERS ENGAGE IN COMMUNITY OUTREACH

In community outreach programs, defenders address particularly volatile issues, such as the roles race and class play in criminal justice. The Washington Defender Association, for example, work closely with lawmakers and public policy experts to try and counter socio-economic disparities and improve race relations through their Racial Disparity Project. n186 In 1999, the Defender Association secured a Bureau of Justice Assistance grant to implement recommendations [\*446] of the Minority and Justice Commission to modify laws, legal practices and policies that may disadvantage some racial groups in their community. n187 The work includes education, both inside and outside the defender community, and assistance to defense attorneys on motions that may implicate racial issues, such as racial profiling. n188 The project has sought input from community groups, judges, prosecutors, police, and private practitioners as well as from defender staff and board members. n189 The defender team is also working closely with the Seattle police and the King County sheriff to develop data concerning stops and arrests so that the dialogue about race, class and police relations can be grounded in accurate information. Similarly, in another project in which PDs participate, the St. Thomas Community Law Center, located in a New Orleans housing project, operates as a charitable organization that works to protect the rights of the residents, combat racism, and bolster community self-determination. n190 Access to civil and criminal lawyers operating within a network of other community-based service organization is the key to successful outcomes.

The Neighborhood Defender Service of Harlem's ("NDS") lawyers and staff are highly respected for their ability to serve clients, families and the larger community. In appropriate circumstances they also collaborate with other criminal justice stakeholders to provide legal representation. n191 In essence, they seek to preserve the community's social fabric that they feel is important to legal defense work. They value the link between individual offenders, their families and the larger community, an innovative attitude for indigent defense providers:

At NDS, we used to have a bunker mentality when it came to the press and seeking community support for our work. I recall long debates in the office about how the community hated us and didn't want us here. In time we learned, though, that our main constituency is our clients' families. It is the family members who seek out our legal services. We have stronger relationships with family members than with clients, and they make up the surrounding community where criminal justice issues impact the poor community in such a big way. We learned that poor communities don't assume all defense lawyers [\*447] are bad, they just want good legal services that represent people fairly. Remember, for every member of the community who is a victim of crime, there is an accused person who has a family in the community. n192

Similarly, those juvenile defender offices that serve their clients zealously during the case proceedings and beyond traditional conceptions of providing counsel recognize the importance of linking their work to families and community. The Juvenile Justice Project of Louisiana ("JJPL") confirms national studies that indicate that the most effective delinquency prevention programs are community-based. JJPL leaders recognize the strengths of the children, their families and their potential:

We have met with families and community leaders who are infinitely better suited to care for their children than is the state. Our project seeks to establish a new paradigm for the representation of juveniles accused of crime, one that works with the child's family and community for direction and guidance on how that child is represented. . . . By establishing clear lines of communication with communities, advocates can help communities organize on behalf of their children. The network of groups such as churches and neighborhood organizations, as well as individuals and institutions, [is what defenders build] upon to provide support and services for the children and their families. n193

Innovative community prosecutors and community defenders understand that even the poorest communities have resources available to provide help in conjunction with the criminal justice system and that long-term benefit comes from addressing problems beyond individual criminal cases. n194 Community defender offices described above are analogous to community prosecution offices, but in the defender world the clients are assigned to defense lawyers in a representational capacity, thus the link to the client, the family and community is more complex and often more lasting. Defenders get to know their clients and the communities in which they work quite well, so that they are more creative when engaging community leaders to problem-solve. Community defenders help with all types of problems related to government accountability, from basic issues such as ensuring that the government meets its obligation to remove garbage and help house an aggressive mentally ill individual living on the street to more complex problems such as trying to deal with a corrupt police unit that continues to harass community members. n195 Some community members have begun to see [\*448] community defender offices as safe havens where they can seek advice or simply vet concerns about police conduct, safety, or any other community problems. n196 In short, PDs and their institutions should be designed to problem-solve for individuals and hold the government accountable to ensure community justice.

#### V. DEFENDER INSTITUTIONS ORGANIZED AROUND ZEALOUS ADVOCACY, PROBLEM-SOLVING, AND COMMUNITY JUSTICE

To complete the picture of community-oriented, problem-solving defenders, this section describes three public defense organizations. Each institutionalizes the dimensions presented in the conceptual model: zealous advocacy of a client's agenda, holistic or whole-client advocacy, defender collaboration with other criminal justice stakeholders, and community service and coalition-building activities. The Neighborhood Defender Service of Harlem, the Bronx Defenders, and the Public Defenders Service of Washington, D.C. ("PDS") are each innovative organizations designed to operate effectively in each of these dimensions. Their mission statements adopt a broad conception of the defense function. Physically, these offices are not located in the courthouses but in the communities they serve. At the core of their institutional mission these defender institutions provide effective courtroom representation. As problem-solvers, these defense lawyers expand the institutional boundaries and move away from the "business as usual" mentality by emphasizing interdisciplinary representation and community outreach. Their uniqueness derives from lawyer and staff teamwork that places a priority on client counseling, social work, local education programs, and helping offenders find employment opportunities. They are indeed problem-solvers for individuals, families, and the local community.

##### A. NEIGHBORHOOD DEFENDER SERVICE OF HARLEM

In 1990, The Neighborhood Defender Service of Harlem ("NDS") opened its doors far from the courthouse and far from traditional ways of thinking about providing indigent defense services. n197 The lawyers opened their minds to find [\*449] new ways of providing effective legal representation by working with other professionals in small teams to litigate and negotiate and to improve defender-community interactions. Teamwork is the cornerstone of how these community defender offices are organized, because it enhances early case entry, client communication and follow-up representation. n198 The model improves information flow, and in addition to taking a case to trial, the teams provide an array of options available to an accused and his or her family. NDS trial teams address an array of issues that plague offender's lives such as housing, addiction, mental health, education, or unique social services needs. n199 Early intervention and information gathering can be very helpful in resolving any problem. In addition to precinct visits, NDS lawyers regularly arrange for voluntary surrender to the police when charges are outstanding. n200 This saves time and police work in addition to ameliorating public safety concerns. Members of the NDS social service team are present at case intake in court three days a week, at which time they conduct social service needs assessments to carefully frame each individual's problems. n201 NDS social workers have expertise and special training to conduct a needs assessment, which means they often see or hear issues that defense lawyers, prosecutors and judges are not trained to identify. Social workers can also see patterns of problems arising from a broader social context and track the impact on certain members of the community.

[\*450] Another factor distinguishing NDS from traditional defender services is that a defense/social work team continues to assist clients long after prosecutors and judges assigned to a case have closed their files. n202 This individualized follow-up work helps to link clients to housing, medical, or employment resources in the community. Access to services and treatment programs on a long-term basis increase the opportunity for lasting personal reform and reintegration into the community. NDS lawyers inform clients that they are available after the case is closed and that support networks are available to help offenders become more productive members of their community. n203 Their efforts to problem-solve at these deeper, long-lasting levels have not gone unnoticed.

NDS has become a valued member of the Harlem Community, and, when its budget was threatened, the community

rallied to its defense to the surprise of even the NDS lawyers. n204 The lawyers and social workers at NDS are intensely dedicated to working with Harlem families because "the line between victim and offender is not nearly as solid as it is often described. . . . Understanding the fluid lines between crime and poverty has helped us provide more comprehensive services to the families we serve." n205 Community defenders are very aware that their clients often play other vital roles in struggling families such as parent, spouse, caretaker and provider. n206 In keeping with this whole-client representation philosophy, NDS recognizes that criminal charges often highlight other problems that need solving. They have extended their representation to civil repercussions of a criminal case, such as eviction or forfeiture. n207 As holistic advocates, NDS lawyers state that it is more efficient for taxpayers and the government to have one office represent a single client on a matter that will be resolved in two or three separate courts. n208 Prevention through education programs is another way to resolve problems and achieve community safety. Exemplifying the outer boundaries of the defense model, NDS engages in many forms of community outreach, particularly education programs that have [\*451] received national recognition. n209 The curricula includes conflict resolution and mediation training to empower students to make healthy decisions, relate to police in more positive ways, and develop their understanding about their rights *and* responsibilities under the law. n210 These community education programs have an impact at the grass-roots level and beyond. n211

## B. THE BRONX DEFENDERS

The Bronx Defenders also breaks from traditional conceptions of the public defense. One does not expect to see children, or their large colorful plastic toys, at the entrance to a PD office, especially in an office that handles some of the most serious cases in the Bronx criminal courts. But expectations are quickly shattered when one enters the Bronx Defenders. This community-centered office has a section of its reception area dedicated as an indoor playground for clients' children and for other visiting children from the community. This is a community defender office in which everything from the structural design to the mission statement creates an atmosphere that embraces all community members. This means that unlike traditional defender offices, the Bronx Defenders is not lawyer-centered, but client-centered and community-centered. Like NDS, the Bronx Defenders is organized so that teams of lawyers, social workers, and investigators collaborate regularly to represent poor people charged with crimes. n212 Everyone in the office is encouraged to provide professional services to clients, their families and members of the surrounding community. n213 The office has become a safe haven for Bronx community members, where case representation means problem-solving collaboration with drug treatment programs and other groups. n214 The Bronx Defenders is a place where people seek help in alleviating an array of problems.

[\*452] The over-arching philosophy of the office is that those charged with crimes "primarily define their experience of going through the criminal justice system by the relationship with defense lawyers. Emotional stability and self-image are impacted greatly by the way their public defender treats them." n215 This means that the defenders are working to help restore dignity inside a community where it has been lost. The Bronx Defenders make every effort to treat clients, families, and concerned friends from the surrounding community with dignity throughout the criminal process and beyond. Although the numbers change at times there is an average of twenty-four staff lawyers and seven client advocates (around four full-time social workers and three M.S.W. interns) who are sensitized to the importance of helping in many aspects of a client's life and of communicating with their families.

In addition to helping families with criminal matters, the Bronx Defenders staff makes referrals to help with housing and job opportunities. As holistic advocates, "lawyers and social workers help clients to get jobs, find places to live and sometimes even to get financial aid and go to college." n216 One young man who got help with drug addiction and then assistance to attend college said, "they showed a lot of love. . . . If they didn't I'd probably be in the same lifestyle I was then." n217 This broad vision of defense counseling helps reduce recidivist conduct among Bronx Defenders clients. Likewise, other prevention efforts are an important part to the Bronx Defenders mission. The Bronx Defenders is a place where young and old are educated, where local high-school debate teams train, where community artists show their work, and where people feel accepted despite their serious problems. It is, in short, a cutting-edge community center that focuses on problem-solving for clients before, during, and after case dispositions. The Bronx Defenders has experienced programmatic successes in a variety of areas, and the community and their funders now encourage the Bronx Defenders to do more. n218

## [\*453] C. PUBLIC DEFENDER SERVICE OF WASHINGTON, D.C.

The Public Defender Service of Washington, D.C. ("PDS") is one of the preeminent criminal defense advocacy offices in the country. From its inception, PDS has had a particular mission to serve as an "on-call" community resource. n219 PDS has not only developed expertise in the effective use of social workers and investigators, but has also expended

significant effort at community education and policy making. For example, PDS will be hiring a full-time community outreach coordinator to develop its outreach programs. n220 This professional coordinator will serve as a liaison between PDS staff and various community education programs, including its ongoing Street Law classes in D.C. schools and its education programs on safe police encounters. n221 In short, PDS and other boundary-breaking defender offices embrace the notion that public defense work [\*454] can help alleviate problems in their communities. n222 Mediation and negotiation skills are discussed more frequently in defender offices nationwide in recognition of the fact that such a small fraction of all cases actually go to trial. Most of these community defender offices that problem-solve for individual clients and families are receiving positive feedback for their expanded role and community outreach. There are, however, risks associated with becoming a problem-solving, community defender institution.

#### D. CONSEQUENCES OF EXPANDING BOUNDARIES IN THE DEFENDER MODEL

Institutionalizing this work is important, but defenders must think carefully about the political risks, the serious lack of data collected to measure the success of these efforts, and the ethical boundaries of engaging in this innovative work that extends the notion of advocacy. Expanding the notion of zealous advocacy to include training lawyers in problem solving skills, holistic advocacy through multidisciplinary practices, and community outreach requires hiring different types of lawyers with different skill-sets.

##### 1. HIRING CONSIDERATIONS

People choose to become defense lawyers for the poor for a wide variety of reasons. Some only want to be zealous trial lawyers—euphemistically known as "trial jocks," "courtroom warriors," "gladiators," or "carnivores" while others strive to become social-work style lawyers dubbed "herbivores." n223 Since some "trial jock" defenders do not feel comfortable working as members of multidisciplinary problem-solving teams, they should remain in the courtroom fulfilling their role as the zealous advocate of a client's agenda throughout the litigation process. Others will enjoy collaborating regularly with social workers, client advocates or community leaders. Providing "counsel" means different things to different people, and not every defender feels comfortable doing this work. Some defenders have skills that make them better suited to the trial setting rather than a counseling and problem solving setting. Some care deeply about mental health issues and work well on developing connections for alternative case dispositions. Others thrive in developing and teaching community education programs.

[\*455] Defender managers, therefore, are now thinking about hiring a balanced group of defense lawyers with different skill sets. n224 In organizing defender institutions, leaders must think about the actual practice of defense work, since the overwhelming number of cases are negotiated n225 and there is a meteoric rise in the number of problem-solving courts demanding specialized expertise (e.g., drugs, domestic violence, mental health, prisoner re-entry, juveniles). To respond to the changing legal practice that does not result in trials a large majority of the time, PD offices need to hire lawyers who have different skills for different judicial and non-judicial settings. Similar to hospital staffs, PD offices now need an array of specialists to make the whole institution effective and dynamic. If defense lawyers are forced into working in the community when they feel most comfortable in an adversarial trial setting, the results will be harmful to the clients and communities involved. Community relations could sour quickly with the wrong defender engaged in community service. Defenders themselves will quit if their jobs turn out to be very different than what they had anticipated. To reduce the risks associated with expanding the boundaries, defender managers must also look beyond their own office hiring policies and case processing needs to political environment as well.

##### 2. THE NEED FOR DATA COLLECTION AND MEASURING OUTCOMES

Defenders and their community supporters must anticipate objections to this model. The main risk is political backlash that could cause a loss of funding because of attitudes such as: "If there is time for all this added community activity by our public defenders then they must not have enough cases or too many people on staff." n226 The most serious objection to this model of defense [\*456] lawyering is the lack of data to measure outcomes or legitimacy of the programs. James Neuhard, the Director of the State Appellate Defender's Office in Michigan states that PDs and assigned counsel systems need:

first to identify agreed-upon yardsticks for what it means to provide effective assistance of counsel. Second, we need to test these new ideas against these yardsticks. . . . The biggest problem is the lack of data and our ability to provide a litmus test or measurements to show that all these defender activities are working, and therefore should be supported. n227 Indeed, there is very little data, and there is no consensus on whether all the dimensions described in the model actually help individual clients pursue their own agenda. Traditional yardsticks of success include not-guilty verdicts, the imposition of

the least restrictions on client's liberty, and perhaps diversion rates and fewer convictions. In reconceptualizing the defense function broadly, can success be measured in terms of reduced recidivism rates, the length of time a client stays dry, the length of time a client keeps a job, family stability, a license restored, or a safer community? Do these factors reflect successful representation by public defense lawyers, and if so, can they be measured? These are questions that need to be addressed if this model is to build momentum.

As a starting point, problem-solving defenders in communities must document their successes and open their doors to social science researchers or others who will assist in measuring outcomes of this innovative problem solving and community-oriented work. n228 Building political support is critical to defenders' efforts to institutionalize their innovative community service and problem-solving enterprises. This requires continued collaborations with resourceful judges, police, and prosecutors who also engage in similar community-oriented, problem-solving criminal justice innovations. Only then will this expanded vision of the right to counsel thrive.

### 3. ETHICAL CONUNDRUMS

Defenders who collaborate with other criminal justice stakeholders must do so with a reasonable degree of caution. Defenders who are invited to the policy [\*457] making table must be sure that their presence is not used as a rubber-stamp of approval for predetermined policies set by police and prosecutors that do not serve their clients or their communities well. The most serious danger in close collaborative efforts that expand the boundaries of the right to counsel is that the defense function will be co-opted. According to one PD:

if you are clear on your vision, your mission, your values, then you weigh everything you do when you're in these coalitions. You can keep yourself from co-opting and you have to be very clear and straight with all members of the coalition of where you are at all times." n229

The model of innovative community-based initiatives and problem-solving efforts to help individual clients should not be interpreted as undermining the most essential functions of defenders, which are to fully protect an accused's interests and to hold the government accountable in that process.

### CONCLUSION

Community justice initiatives and problem-solving approaches to criminal justice are changing many roles and institutional arrangements. Some defense lawyers are unaware of these changes in law enforcement, prosecution or even in the defender world because they are either overwhelmed by workloads, uninterested, or ineffective – and causing real harm to their clients and the system. n230 Alternatively, other indigent defense lawyers and defender leaders are responding well to change in the political and legal landscape and are adjusting their roles to meet new demands placed on them. In the midst of a political climate of get-tough-on-crime and limited resources for traditional courtroom advocacy, some defenders are managing to be creative lawyers and to educate their community about the value of their expanded role. They are building consensus among community leaders, other professionals, and finding unlikely allies. Community members, prosecutors, judges, lawmakers, and defenders themselves understand better that the defense function today involves drawing on problem-solving skills. Defenders must engage other professionals, plan multi-party criminal case preparations or dispositions, engage in strategic negotiations, consensus-build in their communities for political survival, and counsel (in many ways) each of their clients and sometimes their families.

[\*458] Defenders have traditionally bolstered social reform efforts in communities from inside and outside criminal justice institutions. Today, there are many public defender offices, and some assigned counsel, who are doing this effectively. They operate in three general dimensions. First, through zealous whole-client representation. Second, as equal and energetic participants in the criminal justice system. Third, through more active community engagement. Recognizing these different dimensions of the public defense function opens up the possibility for defenders to engage criminal justice stakeholders and consensus-build in different parts of the community. With a clearer conceptual map one can begin to assess the real value of community justice initiatives and problem-solving defender activities.

If, however, only a few pockets of people in the system are helped by this model then will be important to find out whether collectively these activities are draining energy from the core function of the public defense lawyer, which is to provide effective assistance of counsel in the criminal courts. This highlights the need to identify the actual impact on individuals and communities of these expanded public defense operations. Empirical studies should be supported by all stakeholders and community leaders for "what is at stake is only the readiness of the community to live up to the logic of its own institutions." n231

Finally, in considering the large conceptual model presented here, one must exercise a measure of restraint in support

of continued expansion of the defense function. This triumvirate model has its practical, ethical, and constitutional limitations. There are important constitutional and ethical reasons why the core activity of public defense is centered on zealous courtroom advocacy, such holding government actors and witnesses accountable. At some stage, therefore, justice might be better served if defender leaders establish solid boundaries and focus limited public defense energy and resources to specific community-oriented work or problem solving activities. Indigent defense services are under siege in almost every state, and so realistically, most defenders will never be able to institutionalize each of the dimensions described in this article. For now, it is valuable for existing holistic advocacy institutions and problem-solving defenders to continue to help even a small fraction of people moving through the criminal justice system so that other public defenders and assigned counsel can learn from their experiences then transfer parts of this collective knowledge to help clients in the future.

GRAPHIC:

FIGURE 1, A Triumvirate Model of Public Defense

FOOTNOTES:

n1 *E.g.*, COMMUNITY JUSTICE, AN EMERGING FIELD (David R. Karp ed., 1998). *See also* Roger Conner, *Community Oriented Lawyering: An Emerging Approach to Legal Practice*, NAT'L INST. OF JUST. J., Jan. 2000, at 27. For articles on community lawyering, *see* <http://www.communitylawyering.org>. Community prosecution attempts to redefine the institutional prosecutorial role in controlling crime and promote order by creating direct communication links and collaborative working relationships between individual prosecutors, citizens, and the police in neighborhoods to abate specific problems and public safety threats. For a discussion of community prosecution, *see e.g.*, CTR. FOR CT. INNOVATION & BUREAU OF JUST. ASSISTANCE, U.S. DEPT' OF JUST., COMMUNITY PROSECUTION: PROFILES OF AN EMERGING FIELD (2000) (series of white papers profiling outstanding community prosecution programs in Austin, Texas; Denver, Colorado; Portland, Oregon; and, Indianapolis, Indiana) (on file with Author and available at the Center for Court Innovation, [www.courtinnovation.org](http://www.courtinnovation.org)) [hereinafter COMMUNITY PROSECUTION PROFILES].

Engaging the community to solve problems and achieve social and economic equity drawn on the wisdom of local constituencies is an approach that is not limited to lawyers or legal institutions. For example, PolicyLink is an organization that engages the community as a source of rich resources, perspectives and opportunities for positive growth and lasting change. PolicyLink's President, Angela Glover-Blackwell who is a lawyer by training, and staff recognize that government agencies are too disjointed to coordinate treatment for poor children and others in communities. *See e.g.* PolicyLink, *Perspectives on Regionalism: Opportunities for Community-based Organizations to Advance Equity* (Jan. 2000); PolicyLink, *Community-based Initiatives Promoting Regional Equity: Profiles of Innovative Programs from Across the Country* (Feb. 2000) (both publications available at [www.PolicyLink.org](http://www.PolicyLink.org)). Lawyers can, however, become effective at leveraging their advocacy skills to coordinate programs and services, ensuring that they serve individuals, children and families in socio-economically deprived communities.

n2 The term "movement" is used loosely in this context to suggest an emerging field and to identify general community justice and problem-solving trends within criminal justice circles. Basically, these "movements" are shifting attitudes and events worth noting rather than well-defined social movements.

n3 This is evinced by an increase in course offerings on problem-solving lawyering, which falls within the Alternative Dispute Resolution ("ADR") movement. The Carnegie Foundation for the Advancement of Teaching Study of Legal Education Program on Preparation for the Professions has launched a major study of legal education and problem-solving classes. Dean Judith Wegner, Senior Scholar at the Carnegie Foundation recently completed a sixteen-site visit to American law schools. Wegner noted that much of the language used in teaching students to think like lawyers is put in terms of argumentation in class discussions, but that this is changing nationwide. The Carnegie Foundation for the Advancement of Teaching is currently conducting The Carnegie Study of Legal Education, which began in the fall of 1999. *See* CPR Advisory Council on Legal Education of the CPR Institute for Dispute Resolution, *CPR Problem Solving and Legal Education Project* at 8, 62 (working draft presented at the "Lawyer as Problem Solver" Symposium on Dispute Resolution and Deal Making, Harvard Law School, April 7-8; report available through [www.cpradr.org](http://www.cpradr.org). [hereinafter CPR Report]. This report states that more collaboration and problem solving are being taught in several innovative law school courses nationwide. CPR Report at 19-27. For example, a class at the University of Minnesota School of Law addresses race and poverty issues in creative and collaborative ways. The seminar includes fieldwork and collaboration between judges and students using expunged case files. In addition, judges find new ways to approach sentencing relying on fresh ideas

of law students. Remarks of Judith Wegner, *Problem Solving and Legal Education* panel at "Lawyer as Problem Solver" Symposium on Dispute Resolution and Deal Making, Harvard Law School, Apr. 8, 2000.

n4 Community policing and community prosecution place police in the street and prosecutors in communities in an attempt to connect more closely with community members, particularly in socio-economically deprived neighborhoods. In the midst of these community justice efforts by law enforcement, the crime rate has been falling significantly. See NATIONAL CRIME VICTIMIZATION SURVEY, BUREAU OF JUST. STAT., DEP'T OF JUST. (2000), available at <http://www.ojp.gov/bjs> and <http://www.ojp.usdoj.gov>; see also Warren E. Leary, *Violent Crime Continues to Decline, Survey Finds*, N.Y. TIMES, Aug. 28, 2000, at A10 (reporting on the twenty-five year downward trend of reduction in personal and property crime, excluding homicide). Yet the causal factors for the declining crime rates in some areas are unclear. Some attribute the reduction to "a healthy economy, crime prevention programs, tougher sentences, and more police officers on the street" (i.e., out of station houses and police cruisers and into neighborhoods, pursuant to community policing policies). *Id.* Others attribute the drop in crime to governors and local officials who have passed tougher criminal laws, imposed longer sentences, and lowered parole rates. *Id.*; see also *Defeating the Bad Guys, Crime in America*, THE ECONOMIST, Oct. 3, 1998, at 35. This article discusses various guesses as to why the crime rates have fallen, including social, demographic, economic, and political, as well as zero-tolerance policies, the popularity of community policing, incarceration rates, and changing social trends. "Community policing is taken so seriously that it has turned into something not far from social work." *Id.*

n5 In the 1970s, these initiatives by "people's lawyers" were known also as law collectives. See generally Berkeley International Liberation School and the People's Law Book Collective, BEAT THE HEAT: A RADICAL SURVIVAL HANDBOOK (1972) (published with the San Francisco Bay Area members of the National Lawyer's Guild; first of four sections is entitled "The People's Law Book"). See also Anita P. Arriola & Sidney M. Wolinsky, *Public Interest Practice in Practice: The Law and Reality*, 34 HASTINGS L.J. 1207 (1983).

n6 NLADA, with a grant from the Soros Foundation, recently hired a public opinion research group, Belden, Russonello, & Stewart of Washington, D.C., to conduct nationwide focus group studies on how the public perceives the right to counsel for the poor and related issues. See Belden, Russonello, & Stewart, "The Price of Justice: Money, Fairness and the Right to Counsel," September 2000 [hereinafter Public Opinion Report]. This report based on eight focus groups – held in St. Louis, Dallas, Baltimore, and San Jose – identifies key issues that resonate with the public about the value and perceptions of the indigent defense function and public defense lawyers (report available through the National Legal Aid and Defender Association in Washington, D.C. [www.nlada.org](http://www.nlada.org)).

n7 MICHAEL WALZER, SPHERES OF JUSTICE 85 (1983).

n8 For decades, criminal defense lawyers, activists, and policy makers have referred to the lack of political and financial support for indigent defense services at the state level as a state of "crisis." See, e.g., John B. Arango, *Tennessee Indigent Defense System in Crisis*, 7 CRIM. JUST. 42 (1992); Harold H. Chen, *Malpractice Immunity: An Illegitimate and Ineffective Response to the Indigent-Defense Crisis*, 45 DUKE L.J. 783 (1996); Stacey Colino, *When Justice Goes Begging: The Crisis in Indigent Defense*, 17 STUDENT LAW. 14 (1988); Andy Court, *Is There a Crisis? (Poor Man's Justice: A Special Report on Indigent Defense)*, 15 AM. LAW. 46 (1993); Paul Calvin Drecksel, *The Crisis in Indigent Criminal Defense*, 44 ARK. L. REV. 363 (1991); Jeff Rosenzweig, *The Crisis in Indigent Defense: An Arkansas Commentary*, 44 ARK. L. REV. 409 (1991); Robert L. Spangenberg & Tessa J. Schwartz, *The Indigent Defense Crisis is Chronic*, 9 CRIM. JUST. 13 (1994); Kathleen Sylvester, *Indigent Defense in Crisis: Strikes, Suits by Attorneys for the Poor Are on the Rise*, 6 NAT'L L.J. 1 (1983); see also NAT'L LEGAL AID AND DEFENDER ASSOC., GIDEON UNDONE: THE CRISIS IN INDIGENT DEFENSE SPENDING (1983) (presenting a transcript of a hearing on the crisis in indigent defense funding); LISA J. McINTYRE, THE PUBLIC DEFENDER, THE PRACTICE OF LAW IN THE SHADOWS OF REPUTE 2 (1987) (presenting argument that public defenders are "bastard lawyers," not seen as real or legitimate attorneys); MARSHALL J. HARTMAN, BLUE RIBBON COMM. ON INDIGENT DEF. SERVS., CRISIS IN CRIMINAL JUSTICE (1997), available at <http://www.nlada.org/indig/mj97/blueribt.txt>.

n9 A major source for the loss of community service momentum was the political climate and financial cutbacks imposed on all types of legal aid programs. "Fierce political battles have raged about the Legal Services Corporation (LSC) for much of its twenty-three year history." Note, *Recent Legislation, Constitutional Law – Congress Imposes New Restrictions on Use of Funds by the Legal Services Corporation*, 110 HARV. L. REV. 1346 (1997).

n10 Prof. Randy Stone, Director of the F. Mandel Legal Aid Clinic at the University of Chicago, Remarks at the

Executive Session on Indigent Defense Systems, John F. Kennedy School of Government (Mar. 23, 2000).

n11 Louis D. Brandeis, *The Opportunity in the Law*, 39 *AM. L. REV.* 555, 559 (1905).

n12 The U.S. Department of Justice ("DOJ"), through the encouragement of Attorney General Janet Reno, has supported the public defense function more than any other administration since the time of Robert Kennedy. The Bureau of Justice Assistance, lead by director Nancy Gist, a former public defense lawyer in Massachusetts, has organized several conferences to support indigent defense (*see, e.g., infra* note 14) and funded many programs to address parity concerns, the lack of public defense support and leadership training, and structural reform issues at the state level. One of those programs is called The National Defender Leadership Project ("NDLP") run by the Vera Institute of Justice. A second DOJ project is an ongoing series of meetings held at the Kennedy School of Government entitled "The Executive Session on Public Defense" ("ESPD"), which gather top defender leaders and other non-defender criminal justice experts to meet every six months and discuss and write about ways to reconceptualize and improve indigent defense services among public defenders and assigned counsel. In the past three years leaders at the DOJ invited top criminal defense leaders to meet regularly with Attorney General Reno to discuss problems and opportunities in indigent defense. The DOJ supported the National Legal Aid and Defender Association's formation of the American Council of Chief Defenders ("ACCD") - a first in the history of the nation; the ACCD is designed to provide a leadership structure and information sharing among public defense chiefs from all across the country. Jo-Ann Wallace & Scott Wallace, *Planning for the Future of Public Defense: New Leadership, New Partnerships, New Strategies*, in THE SPANGENBERG REPORT, Aug. 2000, at 1.

n13 *See* Jane Nady Sigmon, Elaine Nugent, John Goerdt, & Scott Wallace, *Key Elements of Successful Adjudication Partnerships*, Bureau of Justice Assistance BULLETIN (May 1999) (publication NCJ 173949, available at [www.ojp.usdoj.gov/BJA](http://www.ojp.usdoj.gov/BJA)).

n14 In February of 1999, the DOJ held its first National Symposium on Indigent Defense entitled *Improving Criminal Justice Systems Through Expanded Strategies and Innovative Collaborations*. As this event, Attorney General Janet Reno stated that "never before in the history of the U.S. Department of Justice has there been a meeting like this historic national symposium on indigent defense. . . . Our system of justice will only work, and will only inspire complete confidence and trust of the people, if we have strong prosecutors, an impartial judiciary, and a strong system of indigent criminal defense." Report of the National Symposium on Indigent Defense, *Improving Criminal Justice Systems Through Expanded Strategies and Innovative Collaboration*, Feb. 25-26, 1999, Washington, D.C. at xiii (report published by the Bureau of Justice Assistance and the Office of Justice Programs, U.S. Department of Justice, Mar. 2000 available at the U.S. Government Printing Office, NCJ 181344).

Those who attended this first National Symposium explored the variety of ways that indigent defense services providers are an invaluable component of a fair and equitable criminal justice system. Participants discussed the fact that much more collaborative work must be accomplished to make *Gideon* a reality for all. The second National Symposium on Indigent Defense, *Redefining Leadership for Equal Justice*, was held in June 2000 in Washington, D.C. Over five hundred participants arrived in teams representing all fifty states. The teams participated in panel discussions and consensus-building activities in sixteen workshops, informal meetings, and plenary sessions for two days. The multi-disciplinary teams were made up of defenders, prosecutors, judges, police, corrections officials, bar leaders, county officials and other criminal justice stakeholders. This second National Symposium revisited themes from the first and raised new challenges facing indigent-defense service providers. Report of the Second National Symposium on Indigent Defense 2000, *Redefining Leadership for Equal Justice*, June 29-20, 2000, Washington, D.C. (BJA report forthcoming Spring 2001; preliminary report on file with Author).

n15 Neighborhood Defender Service of Harlem (NDS), "Making Justice a Reality for Those Farthest From its Reach," report published by NDS, Mar. 2000. "NDS defense teams combine the skills provided by attorneys, social service providers, investigators and paralegals. Understanding that social and economic needs often motivate criminal behavior, we provide services for clients to help them become productive citizens, including advocacy for alternatives to incarceration, educational support, psychiatric and psychological referrals and drug treatment placements." NDS Mission & Organization statement, available at <http://www.ndsny.org>. *See also* Lance Johnson, *From the Streets Straight to Video: Leadership and Life Skills*, N.Y. Amsterdam News, Aug. 24-30, 2000, at 32.

n16 Steve Binder, Deputy Public Defender in the San Diego Office of the Public Defender founded the Homeless Court Program (HCP) at "Stand Down," an annual three-day tent city for homeless veterans. *See* Tony Perry, *California and the West Homeless Court Offers New Hope for the Down and Out*, L.A. TIMES, May 1, 2000 at A3. *See also*, Steve Carroll, *Homeless Court: The Public Defender-led Evolution of a New Problem-Solving Specialty Court*, National Legal Aid and

Defender Association publication, *available at* [www.nlada.org/indig/novdec99/homeless.htm](http://www.nlada.org/indig/novdec99/homeless.htm).

n17 Interviews at the State of Minnesota Board of Public Defense, with John Stuart, State Public Defender, Richard Scherman, Chief Administrator, and Robert Ellingson, Government Relations Manager, July 27–29, 1999, Minneapolis, MN (notes on file with Author).

n18 Interviews with Elspeth M. Slayter, M.S.W., Client Advocate, The Bronx Defenders, Oct. 1, 1999 and May 8, 2000, Bronx, NY.

n19 Many public defenders and assigned counsel have been active in social justice and as community activists. Notably, these previously individualized activities are now becoming more formalized inside public defender operations. Defenders realize that without addressing the root problems in clients' lives such as drug addiction or mental health that have led to the criminal conduct, the client will recidivate. Moreover, defenders are sensitive to community concerns and are willing to step out of traditional roles to help alleviate some of these concerns. Increasingly, defenders are shifting the way they think about their job and are more willing to collaborate with other criminal-justice actors, because the lack of collaboration and engagement in policymaking has diminished the defense role, cut their voice out of legislative hearings, and ultimately harmed their clients. *See* Wallace & Wallace, *supra* note 12, at 1.

n20 It is beyond the scope of this Article to present in detail the full scope of the community justice movement. Each community justice program is rich and complex, so this brief description risks superficiality. To further the thesis of this Article (that problem-solving and community service are integral parts of the defense function, which therefore needs more support), it is sufficient to note that community justice is both a popular catch phrase and a work strategy among police, prosecutors, policy makers, lawmakers, and other funders. Community policing, community watch programs, community courts, and other community-based initiatives are rather familiar concepts today in legal and political circles. For purposes of explaining the main thesis of this Article—the growing institutionalization of problem solving and community justice trends in the world of indigent defense—a brief overview of other fields will be sufficient.

The Center for Court Innovation ("CCI") is one of the nation's leading research and technical support organizations studying these movements. They have held several focus group discussions at the DOJ in Washington D.C. through their Justice Project. The first was entitled "A Discussion of Problem-Solving Courts" (Dec. 3, 1999) and the second was entitled "Problem-Solving Courts: The Role of Advocates" (Mar. 8, 2000) (reports forthcoming 2001). For more information about community justice activities and problem solving courts, *see* <http://www.courtinnovation.org>.

n21 The so-called problem-solving "movement" began in policing circles and is in nascent stages in the legal academy. There are several organizations and law schools currently studying problem-solving issues. The point of this Article is not to explore problem-solving approaches in detail, but instead to show how public defenders have always addressed the problems of their clients up close. There is little scholarship on the theoretical underpinnings of the community justice movement and problem solving lawyering trends in the criminal justice context; however, the problem-solving theories have been explored to some extent in the civil context. *See, e.g.,* Paul Brest & Linda Hamilton Krieger, *Lawyers as Problem Solvers*, 72 *TEMPLE. L. REV.* 811 (1999); Carrie Menkel-Meadow, *The Lawyer as Problem Solver and Third Party Neutral: Creativity and Non-Partisanship in Lawyering*, 72 *TEMPLE. L. REV.* 785 (1999); Bennett G. Picker, *ADR: New Challenges, New Roles, and New Opportunities*, 72 *TEMPLE. L. REV.* 833 (1999).

n22 Studies on community prosecution have been conducted by Catherine Coles at the Kennedy School of Government's Wiener Center for Social Policy. Coles focuses on the identification of innovative prosecutors who approach their cases with a mind-set of problem-solving rather than the usual mode of case processing. Coles' objective is to identify modes of organizational change initiated by creative prosecutors, such as how the process of innovative community prosecution starts and continues within current legal institutions. Coles identified the work of four innovative prosecutors, located in Austin, Boston, Indianapolis, and Kansas City. Catherine Coles & George Kelling, *Prosecution in the Community: A Study of Emergent Strategies, Travis County (Austin), Texas, Case Study (May 1–3, 1997)* (unpublished manuscript prepared for the Prosecution in the Community Working Group; draft on file with Author); Catherine Coles & George Kelling, *Prosecution in the Community: A Study of Emergent Strategies, Suffolk County (Boston), Massachusetts, Case Study (May 1–3, 1997)* (unpublished manuscript prepared for the Prosecution in the Community Working Group; draft on file with Author); Catherine Coles & George Kelling, *Prosecution in the Community: A Study of Emergent Strategies, Indianapolis/Marion County (IN), Case Study (unpublished manuscript prepared for the Prosecution in the Community Working Group; draft on file with Author)*; Catherine Coles & George Kelling, *Prosecution in the Community: A Study of Emergent Strategies, Kansas City (MO) Case Study (May 1–3, 1997)* (unpublished manuscript prepared for the Prosecution in the Community

Working Group; draft on file with Author). *See also* COMMUNITY PROSECUTION PROFILES, *supra* note 1.

n23 *See, e.g.*, Anthony V. Alfieri, *Prosecuting Violence/Reconstructing Community*, 52 *STAN. L. REV.* 809 (2000); Meir Dan-Choen, *Law, Community, and Communication*, 1989 *DUKE L.J.* 1654 (1989). Professor Robert Putnam is currently engaged in significant research and teaching on the concept of "social capital" in communities. This is a term first known to be used in 1916 to draw attention to the ways that social ties make our lives more productive and less problem-ridden. ROBERT D. PUTNAM, *BOWLING ALONE* 19 (2000). There are interesting and complex forms of social capital that Professor Putnam calls "bridging social capital" and "bonding social capital." The former creates strong out-group connections and "constitutes a kind of sociological superglue," while the latter creates strong in-group loyalty that can create antagonism towards other groups or communities. *Id.* at 23.

n24 *See* RONALD DWORKIN, *LAW'S EMPIRE*, 167-75, 195-208 (1986) (discussing fraternal and political community and that political integrity assumes a deep personification of the community or state). Dworkin explores three models of community. *Id.* at 208-16. "We treat community as prior to justice and fairness in the sense that questions of justice and fairness are regarded as questions of what would be fair or just within a particular political group. In that way we treat political communities as true associative communities." *Id.* at 208.

n25 *E.g.*, BENEDICT ANDERSON, *IMAGINED COMMUNITIES* 5-8 (1991) (discussing the notion of belonging to community and identifying community boundaries; community can be too big to allow for personal contact among all its members; despite the inability to know one another, a number of people consider themselves or imagine themselves in community with one another).

n26 These communities are often grounded in shared missions, social values or moral norms. The legal historian Professor Lawrence M. Friedman describes the role of morality in criminal justice as "the moral sense of the people who count, and who speak out, in the community." LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 125 (1993).

n27 *See* PUTNAM, *supra* note 23, at 273-74. ("'Community' means different things to different people. We speak of the community of nations, the community of Jamaica Plain, the gay community, the IBM community, the Catholic community, the Yale community, the African American community, the 'virtual' community of cyberspace, and so on. Each of us derives some sense of belonging from among the various communities to which we might, in principle, belong. For most of us, our deepest sense of belonging is to our most intimate social networks, especially family and friends. Beyond that perimeter lie work, church, neighborhood, civic life, and the assortment of other 'weak ties,' that constitute our personal stock of social capital.").

n28 *See e.g.*, John Kretzmann & John L. McKnight, *BUILDING COMMUNITIES FROM THE INSIDE OUT: A PATH TOWARD FINDING AND MOBILIZING A COMMUNITY'S ASSETS*, (1993) (Co-directors of The Asset-Based Community Development ("ABCD") Institute, Institute for Policy Research, Northwestern University). For other publications of the ABCD Institute, *see* [www.northwestern.edu/IPR/publications](http://www.northwestern.edu/IPR/publications).

n29 GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 7 (1997).

n30 Community policing is the most popular of the new community-based law enforcement initiatives. Some of the best research on the community-policing movement appears in the *Perspectives on Policing* papers published through the Kennedy School of Government. *See e.g.*, George L. Kelling & William J. Bratton, *Implementing Community Policing: The Administrative Problem*, July 1993; David M. Kennedy, *The Strategic Management of Police Resources*, Jan. 1993; Edwin Meese III, *Community Policing and the Police Officer*, Jan. 1993; Hubert Williams & Patrick V. Murphy, *The Evolving Strategy of Police: A Minority View*, Jan. 1990. The series is published by the National Institute of Justice, U.S. Dept. of Justice, and available at the Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University.

n31 *See, e.g.*, CTR. FOR CT. INNOVATION & BUREAU OF JUST. ASSISTANCE, U.S. DEPT' OF JUST., *COMMUNITY PROSECUTION PROFILES* (2000) (collecting a series of white papers profiling outstanding community prosecution programs in Austin, Texas; Denver, Colorado; Portland, Oregon; and, Indianapolis, Indiana) (on file with Author) [hereinafter COMMUNITY PROSECUTION PROFILES]. The essence of these community-prosecution initiatives is to build partnerships with communities to improve public safety by using new tools and problem-solving approaches; *see* BARBARA BOLAND, *COMMUNITY PROSECUTION IN WASHINGTON, D.C., THE FIFTH DISTRICT PILOT*

PROJECT (1999) (describing the genesis and organization of a pilot project of the Superior Court Division's Community Prosecution Section made up of nineteen Assistant U.S. Attorneys who work exclusively on matters arising in the Fifth District of the Metropolitan Police Department. This Community Prosecution Section is organized by geography rather than type of crime such as misdemeanors, homicides, violent crimes, general felonies, sex and domestic offenses) (unpublished manuscript on file with Author).

n32 This should be distinguished from the growing effort to rethink criminological theory and crime control policies that focus primarily on geographic "hot spots" where criminal conduct is concentrated, where the emphasis is on "place" more than on relationship-building. *See, e.g.,* Lawrence W. Sherman, *Hot Spots of Crime and Criminal Careers of Places*, in 4 CRIME AND PLACE 35 (John E. Eck & David Weisburd eds., 1995). Many law enforcement experts have been preoccupied with individuals and communities rather than the location or place where crime is concentrated. Scholars find that the dimensions of the criminal career of persons (onset, desistance, continuance, specialization, and desistance) are analogous to the dimensions of criminal activities in "hot spot" places. *Id.* at 39-45. They question, for example, whether certain places tend to specialize in certain types of crime and what the appropriate policy and enforcement response should be.

The challenge for policy, like that for theory, is to identify the most important aspects of routine activity theory in a wide range of places. But unlike theory, policy has to find the things that can be changed, changed easily, and changed without great expense. In the long run, crime may be no easier to control through places than through individuals. But most scientists, investors, and gamblers are attracted by predictability. As long as criminal places are far more predictable than criminal persons, that may be where the public should bet its scarce crime control dollars.

*Id.* at 48.

n33 Around the country, many prosecutors are taking on new responsibilities beyond traditional case processing. They are opening neighborhood offices, getting to know local residents, and adding a new measure of achievement, one that tallies success not just by the rate of conviction or the number of hardened criminals they have put behind bars, but also by the positive impact their actions have on the community. This shift in philosophy and approach is what community prosecution is all about. Rather than dictating to the public how crime and safety issues should be handled, these prosecutors are asking the public for their opinions. Through advisory boards and personal contact with neighborhood prosecutors, local residents are actually helping to set the crime-fighting agenda and, in many cases, are participating in the solutions. Prosecutors are finding that by partnering with the community, they can improve public safety, boost confidence in the justice system, and make communities stronger and more effective.

COMMUNITY PROSECUTION PROFILES, *supra* note 1, at 1.

n34 *See e.g.,* Gordon Basemore and Curt Taylor Griffiths, *Conferences, Circles, Boards, and Mediations: the "New Wave" of Community Justice Decisionmaking* 61 *FED. PROBATION*, 25-37 (June 1997); Note, *Apologetic Justice: Evaluating Apologies Tailored Toward Legal Solutions*, 81 *B.U. L. REV.* 289, 292 (2001) (restorative justice and problem-solving roles are aimed at rebuilding damaged relationships between the victim, the offender, and the community).

n35 James Q. Wilson & George L. Kelling, *The Police and Neighborhood Safety*, *THE ATL. MONTHLY*, Mar. 1982, at 29-38; *see also* KELLING & COLES, *supra* note 29, at 19-26, 38-39.

n36 Poor communities affected by community policing in some areas are accepting new methods of community policing but fear the ever-present reality of police brutality. *Black residents of New York City are afraid of being brutalized by the police, but they welcome and appreciate officers who keep criminals out of their neighborhoods*, *N.Y. TIMES*, June 28, 2000, at A29; Blaine Harden, *Poll Shows City's Blacks Fearing Brutality and Bias but Optimistic on Future*, *N.Y. TIMES*, June 28, 2000, at A29 (describing polls of African Americans who fear police brutality and racism, for themselves and their children; but at the same time, communities also welcome police who keep criminals out of their neighborhoods). *See also* Bernhard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 *MICH. L. REV.* 291 (1998).

n37 *Police Tactics in Question, Stop and Frisk in New York*, *N.Y. TIMES*, Dec. 4, 1999, at A16; *see also* Harcourt, *supra* note 36, at 292 n.11 (finding little scholarship critical of quality-of-life policing initiatives other than in press reports, but citing several *New York Times* articles raising community objections). Clyde Haberman, *A Shooting, And Shooting From the Hip*, *N.Y. TIMES*, Feb 12, 1999, at B1 (describing anger at police and the phenomenon of "W.W.B.—Walking While Black").

n38 Some civil rights campaigners complain that [community policing] is too intrusive; in New Orleans, after more

intensive policing methods were introduced . . . citizen complaints of verbal or physical abuse by officers went up by 11%. And the policy has occasionally increased crime, rather than reduced it. Officers who become involved in their "patch" sometimes grow so intimate with criminals that they cross over to the other side; it happened a few years ago in Philadelphia.

*Defeating the Bad Guys, Crime in America*, THE ECONOMIST, Oct. 3, 1998, at 35. Historically, police forces were professionalized after decades of police corruption and graft resulting from ties too close to community members and politicians. See FRIEDMAN, *supra* note 26, at 358–60.

n39 See MARC MAUER, RACE TO INCARCERATE 118–28, 163, 183 (1999). Mauer describes the fact that in federal and state jails we incarcerate approximately 1.3 million people and if one counts local jails the total is approximately 2 million. Today, we have surpassed the rate of incarceration in Russia and incarcerate six times as many people as we incarcerated in the mid-1970s. Of those people incarcerated the majority are African-American. A black male born in 1991 has a 29% chance of serving prison time in a state or federal prison. Marc Mauer, *Crisis in American Prisons*, Speech to the Institute of Politics study group, John F. Kennedy School of Government, Cambridge, MA (Oct. 18, 2000).

n40 The following texts have begun to constitute the "canon" of restorative justice literature: Heather Strang and John Braithwaite (eds.) RESTORATIVE JUSTICE: FROM PHILOSOPHY TO PRACTICE (Aldershot: Dartmouth, 2000); David Anderson, SENSIBLE JUSTICE: ALTERNATIVES TO PRISON (New York: The New Press, 1998); Daniel Van Ness & Karen Heetderks Strong, RESTORING JUSTICE (Cincinnati: Anderson Publishing, 1997); Martin Wright, JUSTICE FOR VICTIMS AND OFFENDERS: A RESTORATIVE RESPONSE TO CRIME (Winchester: Waterside Press, 1996); Burt Galaway & Joe Hudson (eds.) RESTORATIVE JUSTICE: INTERNATIONAL PERSPECTIVES (New York: Criminal Justice Press, 1996); Howard Zehr, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE (Pennsylvania: Herald Press, 1995); Jim Considine RESTORATIVE JUSTICE: HEALING THE EFFECTS OF CRIME (Lyttleton, New Zealand: Ploughshares Publications, 1995); Burt Galaway & Joe Hudson eds., CRIMINAL JUSTICE, RESTITUTION, AND RECONCILIATION (Monsey, New York: Criminal Justice Press, 1990). See also Leena Kurki, *Restorative and Community Justice in the United States*, 27 CRIME & JUST. 235 (2000); John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, 25 CRIME & JUST. 1 (1999).

n41 Matthew Campbell, Deputy State Attorney, Howard County, Maryland, Remarks at the Second National Symposium on Indigent Defense, *Redefining Leadership for Equal Justice* (June 29–30, 2000) (final report forthcoming 2001).

n42 Tony Fabelo, *What Policymakers Need to know to Improve Indigent Defense Systems*, INDIGENT DEF., papers series from the Executive Session on Public Defense, John F. Kennedy School of Government and the Bureau of Justice Assistance, DOJ (forthcoming 2001).

A strong indigent defense system is the first line of defense against corruption of the justice system. The state can commit crimes against its citizens by abusing its policing and prosecutorial powers. These abuses tend to occur first against poor people alienated from the socioeconomic and political mainstreams. The general public may "look the other way" when these abuses happen to alienated populations, but this apathy may fuel further abuses that may eventually affect a broader segment of the population. Providers of indigent defense services are the first lines of defense in the effort to maintain the system's integrity and prevent the corruption of the justice system typical in many other countries. Widespread corruption eventually can lead to state abuses against law-abiding citizens. Therefore, a strong indigent defense system can help control crime in another area—crimes committed by those who abuse state policing, prosecutorial, and judicial powers.

*Id.*

n43 Remarks at the National Symposium on Indigent Defense: Redefining Leadership for Equal Justice, Workshop I, at 21 (June 29–30, 2000) (final report forthcoming).

n44 See, e.g., STEPHEN BURGHARDT, ORGANIZING FOR COMMUNITY ACTION 100–11 (1982); LANI GUINIER & GERALD TORRES, THE MINER'S CANARY (based on Harvard University's W.E.B. Dubois Institute Huggins Lectures, Apr. 1999) (forthcoming 2001); see also John O. Calmore, *The Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927 (1999).

n45 David Feige, *How to Defend Someone You Know is Guilty*, N.Y. TIMES, sec 6, 59–60 (Apr. 8, 2001). David Feige is the trial chief at the Bronx Defenders.

n46 This has been a common complaint among most public defender leaders and assigned counsel lawyers. Outside of budget discussions in the legislature, the norm has been to exclude defenders from public policymaking discussions around

broader criminal justice issues including the creation of problem-solving courts. Discussions of the American Council of Chief Defenders (ACCD) at the 78th National Legal Aid and Defender Association Annual Conference, Nov. 29 - Dec.2 (2000), Washington, D.C.

n47 The recent police scandals (police corruption, police brutality and cover-ups) in Los Angeles and New York were committed by a group of police officers in specialized units. Some public defenders report that they had been aware through community information that some of these units were problematic and had been told of corruption. In Los Angeles, however, Michael Judge, the L.A. Public Defender, reports that judges' strict application of a California Code of Evidence record disclosure provision prevented the public defenders from gathering information about specific officers suspected of abuse or corruption. The Evidence Code states that the government, upon motion, does not have to provide access to peace officer's records of complaints or discipline imposed if justice requires it "to protect the officer or agency from unnecessary annoyance, embarrassment, or oppression." WEST'S ANN. CAL. EVID. CODE § 1045(d). Trial courts are granted wide discretion when ruling on motions to discover police officers' personnel records. *People v. Samoya*, 64 Cal. Rptr.2d 400, 938 P.2d 2 (1997), cert. denied 522 U.S. 1125 (1998).

If the defenders had access to police officer records of complains or discipline and an effective means of communicating this information to parties willing to listen, some of the harm caused by these officers could have been avoided, along with the negative impact on public perception of police practices in these cities. Telephone Interview with Michael Judge (Apr. 4, 2001).

n48 See Menkel-Meadow, *supra* note 21, at 17. See also Brest & Krieger, *supra* note 21; Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 755 (1984); Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education* (on file with Author; forthcoming 6 HARV. NEG. L. REV. 2001).

n49 For example, the American Bar Association recently held a Presidential Showcase CLE Program at the Annual Meeting entitled "The 21st Century Public Lawyer: Problem Solver or Case Processor?" jointly sponsored by the ABA's section on Dispute Resolution, the Government and Public Sector Lawyers Division and the Criminal Justice Section. ABA ANNUAL MEETING AGENDA, July 8, 2000. Panelists included a judge, prosecutor, academics and a DOJ official discussing mediation and holistic, problem-solving approaches to lawyering as opposed to a case processing model.

n50 See Herman Goldstein, *Problem-Oriented Policing* (1990) book review by Lawrence W. Sherman, 82 J. OF CRIM. L. & CRIMINOLOGY 693, 706 (1991); MALCOLM SPARROW ET AL., BEYOND 911: A NEW ERA FOR POLICING 17 (1990).

n51 See *supra* note 8.

n52 The Boston Gun Project, for example, was "an attempt to bring problem-solving policing to bear on the city's youth homicide problem"—a collaborative project dealing with chronic gang offenders by reaching out directly to them, setting clear standards of non-violent behavior, which was backed up with the willingness and ability to go after violators using every legal lever available. David M. Kennedy, *Pulling Levers: Getting Deterrence Right*, NAT'L INST. OF JUST. J., July 1998, at 3.

Community policing and problem-solving policing can be viewed as attempts to escape what have become routine, and often unsatisfactory, choices posed by traditional thinking about crime control. . . . [These strategies have borrowed] from the repertoire of both enforcement and prevention crafting strategic interventions for particular problems in concert with a wide variety of new partners.

*Id.* at 8. Kennedy suggests that the key to getting deterrence right may be simply communicating with the offender—an unlikely ally in developing effective crime control strategies. *Id.* at 8; see also Anthony A. Braga et al., *Youth Homicide in Boston, An Assessment of Supplementary Homicide Report Data*, HOMICIDE STUD., Nov. 1999, at 277-99; David M. Kennedy, *Pulling Levers: Chronic Offenders, High-Crime Settings, and a Theory of Prevention*, 31 VAL. U. L. REV. 449 (1997); David M. Kennedy, *A Look at Reacting to Violence, But Boston Proves Something Can Be Done*, WASH. POST, May 23, 1999, at B3; David M. Kennedy & Anthony A. Braga, *Homicide in Minneapolis, Research for Problem Solving*, in HOMICIDE STUD., Aug. 1998, at 263.

n53 Elizabeth Glazer, *Thinking Strategically: How Federal Prosecutors Can Reduce Violent Crime*, 26 FORDHAM URB. L.J. 573, 581-606 (1999).

n54 *Id.* at 575. The goal is to fix what's wrong with the traditional model of the prosecutor's role of reactive case-

processing by adopting a strategic deployment of federal resources, (occasionally in conjunction with non-federal resources especially in the investigation), to resolve particular problems. The net result is that federal prosecutors become crime-fighters through targeted intervention strategies. *Id.* at 581-85.

n55 *Id.* at 606. This broader understanding of roles is a "revolutionary move from case processor to crime fighter" for federal prosecutors. *Id.*

n56 *Id.* at 596. This broader vision of federal prosecutors sees the prosecutorial role as a connecting force using information gathered from various federal agencies' investigations and cases. The lawyers and the office provide a platform and access to information among local agencies that work with the office. *Id.* This expanded role values information and coordinated action. "A methodological identification and use of the confluence of all this information could play an important role in solving the immediate crime problem and in putting in place a broader mechanism addressing all the non-enforcement aspects of the problem that could contribute to a long-term prevention of crime" *Id.* at 605.

n57 Coordinating action among community leaders, agencies, government bodies, and community members is not what most prosecutors buy into when they accept their job. But for a problem-solving prosecutor, the role as convener of non-traditional groups:

is a crucial one. Almost every area of urban distress is an area that has an impact on crime: the physical deterioration of the housing development may invite criminal activity. In one world the solution may be to arrest a rapist. In another, a light in a parking lot may prevent the rape.

*Id.* at 605.

n58 With the Attorney General's support, the DOJ has sponsored projects and focus group discussions to develop knowledge about how lawyers can be problem-solvers in the criminal justice arena. "The Justice Project" is a joint project of the DOJ's Office of Justice Programs and the CCI. The Justice Project regularly convenes approximately twenty top practitioners, legislators and legal academics to hold day-long round table discussions on problem-solving strategies and problem-solving courts. The Justice Project held a "Discussion of Problem-Solving Courts" on December 3, 1999 in Washington, D.C. at the DOJ and a second round table discussion on March 8, 2000 entitled "Problem-Solving Courts: The Role of Advocates." (materials from day-long meetings on file with Author and available through the CCI, 351 West 54th St. New York, NY 10019 or available at <http://www.courtinnovation.org>).

n59 Janet Reno, *Lawyers as Problem Solvers*, Keynote Address Before the Association of American Law Schools ("AALS") (Jan 7, 2000), in 49 *J. LEGAL ED.* 5 (1999). Academics are also rethinking the role of lawyers in other areas of the law, particularly in terms of negotiation and settlement outside of the traditional litigation models. See, e.g. Russell Korobkin & Chris Guthrie, *Psychology, Economics, and Settlement: A New Look at the Role of the Lawyer*, 76 *TEX. L. REV.* 77 (1997).

n60 The DOJ Bureau of Justice Assistance recently sponsored a second "National Symposium on Indigent Defense 2000: Redefining Leadership for Equal Justice," where many speakers advocated problem-solving approaches to client representation. More resources and hiring of social workers or other professionals is a critical part of problem-solving for clients. These defenders broadly defined problem solving to include broad collaboration so that defense lawyers could take more of a leadership role in criminal justice policy making and court reform efforts. Report of the Second National Symposium on Indigent Defense: Redefining Leadership for Equal Justice (forthcoming Winter 2001; preliminary report on file with Author).

n61 At the recent Harvard conference on "The Lawyer as Problem Solver, A Symposium on Dispute Resolution and Deal Making," there was no mention of the hundreds of problem solving courts operating nationwide; nor was there discussion of problem solving strategies and techniques in any criminal justice arena outside of the usual mention of the prisoner's dilemma. Symposium, *supra* note 14.

n62 Susan K. Knipps & Greg Berman, *New York's Problem-Solving Courts Provide Meaningful Alternatives to Traditional Remedies*, 72 *N.Y. ST. B.A.J.* 8, 9 (2000). For example, if a part of a sentence is that an individual will receive treatment for addiction or a personality disorder, and if the sentence includes community service, then the community benefits from mandated community service such as painting over neighborhood graffiti and cleaning local parks, and the likelihood of recidivist conduct is reduced if the offender gets help for his or her specific problems.

n63 U.S. CONST. amend. VI.

n64 See *Gideon v. Wainwright*, 372 *U.S.* 335 (1963) (holding that the Sixth and Fourteenth Amendments required states

to provide counsel to all indigents accused of a crime in their jurisdictions). The right to counsel for those accused of a crime in state courts is a relatively new phenomenon as compared to the express constitutional rights against unreasonable searches and seizures or the Sixth Amendment rights to speedy and public trials.

n65 See *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (holding that *Gideon's* right to counsel applied to petty offenses that carried a possible sentence of incarceration). See also *In re Gault*, 387 U.S. 1 (1967) (extending this right to all juveniles in delinquency proceedings where the juvenile faces possible incarceration).

n66 The American Bar Association, along with most states, have established some written guidelines in this area. See, e.g., ABA STANDARDS FOR CRIM. JUST. PROVIDING DEF. SERV. (3d ed. 1992).

n67 The DOJ is now compiling a soon-to-be-released seven volume compendium of standards. See Attorney General Janet Reno, Remarks at the National Symposium on Indigent Defense 2000 (June 29, 2000), available at <http://www.ojp.usdoj.gov/indigentdefense/renoremarks.htm>.

n68 William J. Stuntz, *The Uneasy Relationship Between Criminal Procedure and Criminal Justice*, 107 YALE L.J. 1, 76 (1997).

n69 For a more complete explanation of how defender services are provided, see Robert L. Spangenberg & Marea L. Beeman, *Indigent Defense Systems in the United States*, 58 LAW & CONTEMP. PROBS. 31 (1995).

n70 Maine and North Dakota are two states that have no statewide public defender system.

n71 See, e.g., Texas State Bar Association, *Report on Indigent Defense Services* (2000), available at <http://www.capitol.state.tx.us/tlo/>

n72 See *Low-Bid Criminal Defense Contracting: Justice in Retreat*, THE CHAMPION, Nov. 1997, at 10. See also Stephen B. Bright, *Neither Equal Nor Just: The Rationing and Denial of Legal Services to the Poor When Life and Liberty are at Stake*, 1997 ANN. SURV. AM. L. 783 (1997) (discussing the crisis in rationing legal services to the indigent); Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime But for the Worst Lawyer*, 103 YALE L.J. 1835 (1994).

n73 Steven K. Smith & Carol J. DeFrances, *Indigent Defense*, BUREAU OF JUST. STATISTICS SELECTED FINDINGS, Feb. 1996, at 2.

n74 *Id.* at 1.

n75 BJS has been working closely with the American Bar Association, the National Association of Criminal Defense Lawyers, and the National Legal Aid and Defenders Association and other indigent defense providers to identify important areas for data collection. See <http://www.ojp.usdoj.gov/bjs/>.

n76 *Id.* at 2-3. Although information about indigent defense services nationwide is relatively scarce and most is out-of-date, BJS surveys contain some information related to the indigent defense for criminal defendants. Twenty-eight percent of state court prosecutors reported in 1992 that their jurisdiction used public defender programs exclusively to provide indigent counsel. In 1990, state and local governments spent approximately \$1.3 billion on public defender services. In 1979, this figure was about \$300 million. In constant 1990 dollars, state and local expenditures doubled for public defense from 1979 to 1990. About three-fourths of the inmates in state prisons and about half of those in federal prisons in 1991 received publicly - provided legal counsel for the offense for which they were serving time. BUREAU OF JUST. STAT., DEPT OF JUST. REPORT (Feb. 1996) (NCJ-158909).

n77 See *supra* note 12.

n78 "The story of crime and punishment over the years is a story of social changes, character changes, personality changes; changes in culture; changes in the structure of society; and ultimately, changes in the economic, technological, and social orders." FRIEDMAN, *supra* note 26, at 11.

n79 See MAUER, *supra* note 39.

n80 *Id.*

n81 See e.g., Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Law and the Limited Scope of Proposed Reforms*, 113 HARV. L. REV. 1936 (2000). The author discusses the trend where new "criminal justice policies, Immigration and Naturalization Service ("INS") enforcement policies, and the new mandatory detention system render

the new laws far more unforgiving in practice than is apparent from their texts. As a result, the new deportation regime greatly increases the risk that a conviction for a crime will result not only in criminal punishment, but also in exile and family separation." *Id.* at 1937. See also Daniel Kanstroom, *Immigration Consequences of Criminal Offenses*, reprinted in 1993 Cumulative Supp. to 2 MASS. CRIM. DEF., TRIAL AND POST TRIAL 106-15 (Eric Blumenson & Stanley Z. Fisher eds., Butterworth 1993).

n82 The Bureau of Justice Statistics reported a 91% plea rate in 1996 for felony sentences in state courts (data on-line at [www.ojp.usdoj.gov/bjs/abstracts/fssc96.htm](http://www.ojp.usdoj.gov/bjs/abstracts/fssc96.htm)). While it is true that most cases do not proceed to trial, many do and many are found not guilty. Also many cases are dismissed. The 91% rate is not for public defender cases in general, but only for those cases for which a client was sentenced. Jim Hennings, Executive Director of Metropolitan Public Defender, states that of the cases adjudicated to a final decision of guilty or not guilty, 38% were not guilty and 7% were contested by trial; the plea rate of those cases was only 58%. For an interesting description of "underlitigation" of criminal cases, see Stuntz, *supra* note 68, at 32-35.

n83 See Jodi M. Brown & Patrick A. Langad, *Felony Sentences in the United States, 1996*, DEP'T OF JUST., at 1 (July 1999) (1,041,809 people convicted of felonies in 1996). See also MAUER, *supra* note 39, at 57-58, 103-05.

n84 See Steven Zeidman, *To Plead or Not to Plead: Effective Assistance and Client-Centered Counseling*, 39 B.C.L. REV. 841, 884-97 (1998). For an interesting history of the political origins of plea bargaining as a tool for leniency in the face of strict British common laws and as a tool to preserve discretion over sentencing policy, see Mary E. Vogel, *The Social Origins of Plea Bargaining: Conflict and the Law in Process of State Formation, 1830-1860*, 33 LAW & SOC'Y REV. 161, 206-07 (1999).

n85 Alcohol abuse is often a crucial factor contributing to offender behavior. See e.g. Susan E. Martin (Ed.) *Alcohol and Interpersonal Violence: Fostering Multidisciplinary Perspectives* NAT'L INST. ON ALCOHOL ABUSE AND ALCOHOLISM RESEARCH MONOGRAPH 24 (NIH Publication No. 93-3496) Rockville, MD: National Institutes of Health (1993). Many offenders who suffer from mental illness also abuse substances. In a large epidemiological study, people with mental illness were found to be at nearly three times the risk for substance abuse as those without mental illness. Darrel A. Reiger, Mary E. Farmer, Donald S. Rae, Ben Z. Locke, Samuel J. Keith, Lewis L. Judd and Frederick K. Goodwin. *Comorbidity of Mental Disorders with Alcohol and Other Drug Abuse* 264 JAMA 2511 (1990). The rise in community-service sentencing and treatment programs has been motivated by an effort to reduce recidivism caused by offenders' problems (e.g., drugs, alcohol, domestic abuse, housing, employment and health issues). For example, the original vision of the Midtown Community Court (MCC) was to regard the arrest as a crisis moment and the arraignment hearing as a coercive event essentially forcing an offender to be linked to various services at the courthouse thereby stopping the revolving door cycle. Michelle Sviridoff, David Rottman, Brian Ostrom, & Richard Curtis, *Dispensing Justice Locally: The Implementation and Effects of the Midtown Community Court*, 261-69 (1997) (report published by the MCC, on file with Author).

To prevent offenders from recidivating some public defender offices see holistic advocacy as the answer. Albert LaFave, Jr. of the Charlottesville Public Defender office writes: "When a client is before the court at sentencing without a 'holistic' defense approach, all the client may retain from the experience is whether or not he or she went to jail. Following this experience there are many times when a client later blames the court for a bad judgment or the lawyer for an inadequate defense, failing to recognize any of his or her own responsibility in the situation. The chances of a client re-offending under these circumstances seems more probable." Letter from Albert LaFave Jr., Sentencing Advocate, Office of the Public Defender for Albemarle and the City of Charlottesville (Mar. 15, 2001).

n86 M.L. Durham, *The Impact of Deinstitutionalization on the Current Treatment of the Mentally Ill*, 12 INT'L J.L. & PSYCH. 117 (1989).

n87 See E. FULLER TORREY, M.D., *OUT OF THE SHADOWS, CONFRONTING AMERICA'S MENTAL ILLNESS CRISIS* 8-11, 205-07 (1997).

n88 E. Fuller Torrey, J. Steiber, J. Ezekiel, S.M. Wolfe, J. Sharfstein, J.H. Noble, & L.M. Flynn, *Criminalizing the Seriously Mentally Ill: The Abuse of Jails as Mental Hospitals*, 2 INNOVATIONS & RESEARCH 11 (1993). See Heather Barr, *Prisons and Jails: Hospitals of Last Resort, The Need for Diversion and Discharge Planning for Incarcerated People with Mental Illness in New York*, 1999 (publication of the Correctional Association of N.Y. and the Urban Justice Center). Ms. Barr is a Soros Justice Fellow and a lawyer with the Urban Justice Center's Mental Health Project. See also Jessica Neubauer, *The Criminalization of the Mentally Ill*, (Apr. 2000) (unpublished paper, on file with Boston Univ.).

n89 Because of the noticeable rise in mentally ill clients, several PD offices have established specialized units where lawyers handle most of the clients with serious mental illness. They also recognize that a large number of other cases also involving less-serious mental health issues but these issues need attention as well. In Memphis, for example, the Shelby County Public Defender Office has a Coordinator for Mental Health Systems. Stephen Bush is an experienced Assistant Shelby County Public Defender and handles cases for clients with serious mental illness and trains other public defenders in the office. Interview with Stephen Bush, Sept. 20 (2000) Memphis, Tennessee. A 1998 Tennessee jail survey by the Tennessee Mental Health Planning Council revealed that approximately 18.9% of detainees were believed to have a diagnosis of mental illness. Criminal Justice Task Force Report, *Mental Health & Criminal Justice in Tennessee*, at 5 (June, 2000) (monograph by the Tennessee Department of Mental Health and Mental Retardation and the Tennessee Mental Health Planning Council on file with Author). The Knox County Public Defenders Office is opening a Community Law Office that will focus part of its whole-client advocacy on dealing with mental illness in the criminal justice system. Similarly, other public defender systems, such as the one in Seattle-King county (per E-mail correspondence from Anne Daly, Society of Counsel Representing Accused Persons (Apr. 18, 2000)) and the Los Angeles County PD (per Telephone Interview with Michael Judge, Chief Public Defender (Apr. 5, 2001)) have participated in forming mental health courts and in task forces reviewing mental health issues.

n90 See TORREY, *supra* note 87, at 16-18. Estimating that "the prevalence of severe mental disorders among the homeless is 35%, although this varies somewhat from city to city. [One] 1988 estimate of 402,000 homeless people in the United States would imply that approximately 141,000 in this group were severely mentally ill. In 1995, based on the increase in total population since 1988, this number would have risen to approximately 150,000 seriously mentally ill people. This is the equivalent to the entire population of Hartford, Connecticut; Fort Lauderdale, Florida; Providence, Rhode Island; or Reno, Nevada." *Id.* at 18.

n91 *Id.* at 8-9.

n92 *E.g.* Social Security Act of 1965, tit. XIX Medicaid benefits, 42 U.S.C. § 1396, P.L. 89-97. See STEVEN M. GILLON, *THAT'S NOT WHAT WE MEANT TO DO: REFORM AND ITS UNINTENDED CONSEQUENCES IN 20TH CENTURY AMERICA* (2000) (discussing de-institutionalization and the early efforts to draw attention to conditions of the mentally ill).

n93 G.N. GROB, *THE MAD AMONG US: A HISTORY OF THE CARE OF AMERICA'S MENTALLY ILL* (Harv. Press 1994); C. JENCKS, *THE HOMELESS* (1994). See also B. Veysey, M. Steadman, H.J. & S. Salasin, *Double Jeopardy: Persons with Mental Illness in the Criminal Justice System*, U.S. DEPT' OF HEALTH & HUMAN SERV., ROCKVILLE, MD (1995); L.A. Teplin & N.S. Pruett, *Police as Street Corner Psychiatrists: Managing the Mentally Ill*, 15 INT'L J.L. & PSYCH. 139 (1992); Fox Butterfield, *By Default, Jails Become Mental Institutions*, N.Y. TIMES, Mar. 5, 1998, at A1.

n94 Attorney General Janet Reno urged defense service providers to maintain the adversarial role while also adopting a problem-solving role. "A competent lawyer will skillfully cross-examine a witness and identify and disclose a lie or a mistake. A competent lawyer will pursue weaknesses in the prosecutor's case, both to test the basis for the prosecution and to challenge the prosecutor's ability to meet the standard of proof beyond a reasonable doubt. A competent lawyer will force a prosecutor to take a hard, hard look at the gaps in the evidence. . . . A competent lawyer will know how to conduct the necessary investigation so that an innocent defendant is not convicted . . . A competent lawyer, if he or she possibly can, will help their client address the problems that caused the crime in the first place and help them solve the problems so that it does not occur again." Attorney General Janet Reno, Remarks at the National Symposium on Indigent Defense 2000, *Redefining Leadership for Equal Justice*, Washington, D.C., June 29, 2000 (forthcoming Bureau of Justice Assistance publication available at <http://www.ojp.usdoj.gov/indigentdefense/renoremarks.html>).

n95 Nationwide defender leaders and managers are now discussing ways to expand the role of defenders inside their offices, in the justice system, and in their communities. For example, the Bureau of Justice Assistance ("BJA") is funding a multi-year Executive Session on Public Defense Systems ("ESPD") at Harvard's Kennedy School of Government with the goal of improving the effectiveness of the defense function in state systems. Practitioners and academics analyze new ways that defenders can better serve both their clients and communities. Another goal is to increase awareness of the value defenders provide to the public and overall system fairness.

Likewise, the Vera Institute of Justice operates a National Defender Leadership Project ("NDLP") that provides training to assist defender managers to realize fully their potential leadership roles in the system and in their communities. NDLP

"provides training, produces publications, and fosters discussion, all with the aim of helping defender managers fully realize their leadership roles in the criminal justice system. It brings together defender managers from across the country to share ideas and explore ways to shape criminal justice policy." Ellen Schall & Nancy Vorsanger, *Ultimate Advocacy: A Defender's Guide to Reflective Practice* 5 (NDLP monograph, VERA INST. OF JUST., 1999). See also Nancy Vorsanger & Mark Moore, *Ultimate Advocacy: A Defender's Guide to Strategic Management* (NDLP monograph, VERA INST. OF JUST., 1999).

Both ESPD and NDLP participants recognize that defenders need to adapt to changes in criminal justice policy making and practice to remain effective. See also Kim Taylor-Thompson, *Effective Assistance: Reconceiving the Role of the Chief Public Defender*, 2 J. INST. STUD. LEGAL ETHICS 199 (1999). Law schools and continuing legal education ("CLE") programs can shift cultural perceptions and practices of indigent defense towards community service. Some law school clinics have begun this process. For example, Professor Kim Taylor-Thompson teaches a Community Defender clinical course with NYU's School of Public Service.

n96 E.g., Randolph N. Stone, *The Role of State Funded Programs in Legal Representation of Indigent Defendants in Criminal Cases*, 17 AM. J. TRIAL ADV. 207 (1993). Professor Stone described several models of defender service delivery: PDS in Washington, D.C., Cook County Public Defenders Office, Criminal Defense Consortium of Cook County, and, Neighborhood Defender Service of Harlem. The article then discussed in thirteen separate sections the essential components for effective representation: early entry into the case sufficient funding and resources, vertical representation, caseload limitations, mixed system (private bar to supplement PD office), diversity, standards of performance and training, independence, *public education and community outreach*, law school relationships, parity with prosecutors; status, collateral representation, and choice of counsel. *Id.* (emphasis supplied). See also Charles Ogletree, *An Essay on the New Public Defender for the 21st Century*, 58 LAW & CONTEMP. PROBS. 81, 89 (1995).

n97 David E. Rovella, *The Best Defense, Rebuilding Clients' Lives to Keep Them from Coming Back*, NAT'L L.J., at A1 (Jan. 31, 2000).

n98 See e.g., National Defender Leadership Project, *Ultimate Advocacy: A Defender's Guide to Strategic Management* at 26–30 (monograph published by the Vera Institute of Justice, New York 1999) (discussing several defenders who built coalitions and consensus around issues or community outreach programs in order to provide more complete representation for their clients).

n99 See *supra* note 17.

n100 See e.g., *State v. Peart*, 621 So. 2d 780 (1993) (state court challenge to resources provided to public defense); *Wallace v. Kern*, 392 F. Supp. 834 (E.D. N.Y. 1973), 481 F. 2d 621 (2d Cir. 1973) (per curiam). For a comprehensive examination of defender litigation reform efforts, see Note, *Gideon's Promise Unfulfilled: The Need for Litigated Reform of Indigent Defense*, 113 HARV. L. REV. 2062 (2000).

n101 *Id.* If indigent defense lawyers cannot build sufficient coalitions, secure adequate budgets, or object to substantive criminal justice policies or police procedures then litigation is always an avenue of last resort. I say "last resort" because litigation is expensive and time-consuming. Most defenders are operating under serious constraints in both these areas and do not decide to enter litigation lightly.

n102 Telephone Interview with James Hennings, Executive Director, Metropolitan Public Defenders Office, Portland, Or. (Apr. 10, 2000).

n103 Counseling is considered by experts to be a "person-to-person art; the heart of coaching and developing is the act of counseling. And the effectiveness of counseling hinges on empathy." DANIEL GOLEMAN, WORKING WITH EMOTIONAL INTELLIGENCE 147 (1999/2000).

n104 Telephone Interview with Elspeth Slayter, M.S.W., Client Advocate, The Bronx Defenders (May 16, 2000).

n105 Innovative public defender offices use holistic advocacy approaches as having a positive impact on public safety by reducing recidivism and victimization in a community. For example, the Miami-Dade County Florida Public Defender's Office has started an anti-violence initiative that "consists of defender-community collaborations designed to help clients lead law-abiding lives by developing more constructive diversion and sentencing options and expanding their access to effective treatment. . . . [Anti-violence initiative] AVI is also intended to improve public safety and reduce the number of victims by expanding the role of public defenders." Bennett H. Brummer, *Community Partnerships, Holistic Advocacy*

through a "Public Defender Anti-Violence Initiative," 3 INDIGENT DEF. 1 (May/June 1999) (NLADA newsletter).

n106 Georgia Justice Project ("GJP") brochure entitled *Changing Our Community by Transforming Individuals One Person at a Time* (on file with Author). The Mission of GJP is to ensure justice for the indigent criminally accused and take a holistic approach to assist them in establishing crime-free lives as productive citizens. *Id.* Douglass Ammar, the Executive Director of GJP, reports that through their holistic approach GJP saves state and local governments because of reduced recidivism. The Georgia Department of Corrections reports a recidivism rate of approximately 40% for prisoners re-entering the system within three years of release. "The Georgia Justice Project's recidivism rate is approximately 20%." See *Georgia Justice Project Report on Estimated Savings*, 1 (2000) (unpublished report on file with Author).

n107 David Rohde, *In Teeming Courts, Finding Strength in Family Ties*, N.Y. TIMES, July 7, 1999, at A1, A17.

n108 Telephone interview with James Hennings, Executive Director, Metropolitan Public Defender in Portland, Or. (Apr. 10, 2000) (notes on file with Author).

n109 *Id.*

n110 Letter from Joshua M. Dohan, Director, Youth Advocacy Project ("YAP"), Committee for Public Counsel Services, Roxbury, MA to Author (Apr. 28, 2000) (on file with Author). See also YAP Brochure, YAP, Committee for Public Counsel Services, Roxbury, MA [hereinafter YAP Brochure].

n111 YAP Brochure, *supra* note 110.

n112 *Id.*

n113 Final Report of the National Symposium on Indigent Defense Systems 2000: Redefining Leadership for Equal Justice, Washington, D.C. (June 29–30, 2000) (published report forthcoming). Several panels of defenders raised the issue of how the defense function can help clients solve problems, reduce recidivism, and thus, the defense function is engaged in crime reduction or crime fighting. See also *The Best Defense is No Offense, Preventing Crime Through Effective Indigent Defense*, by Mark Moore, Lenny Noisette, Carlos Martinez and Michael Judge (forthcoming INDIGENT DEF., Executive Session on Public Defense, paper series published by the Bureau of Justice Assistance. This paper discusses how indigent defense counsel can play a role in crime fighting and reducing recidivism through innovative defense strategies.).

n114 Bennett H. Brummer, *Community Partnerships, Holistic Advocacy through a Public Defender Anti-Violence Initiative*, 3 INDIGENT DEF. 1 (May/June 1999) (NLADA newsletter).

n115 *Id.*

n116 See Bennett H. Brummer, *Anti-Violence Initiative Secondary Community Partnerships* (2000) (report on file with Author); see also [www.pdmiami.com](http://www.pdmiami.com).

n117 *Supra* note 113.

n118 *Id.*

n119 Tom Mashberg, *All the Rage; Bay State Judges Argue for Anger Management*, BOSTON HERALD, Oct. 22, 2000 at 18. For example, the San Diego Public Defender's office works with alternative sentencing programs that include anger management classes. Some Defender offices link with local organizations such as St. Vincent de Paul's and tap into their ongoing life skills programs that include anger management and other types of self-improvement classes such as computer skills, job training, and Alcoholics Anonymous. By building consensus for helping offenders, a significant community support network is created and in time might be institutionalized or at least become a part of the defender culture. Telephone interview with Steve Binder, Deputy Public Defender, San Diego County (Apr. 3, 2000).

n120 Telephone interview with Steve Binder, Deputy Public Defender, San Diego County (Apr. 3, 2000). See also James C. Howell & J. David Hawkins, *Prevention of Youth Violence*, 24 U. CHI. CRIME & JUST. 263 (1998) (anger management, self-esteem and other programs can help prevent youth violence).

n121 For example, the Client Advocates at the Bronx Defenders have a Masters in Social Work ("M.S.W.") and when the attorneys ask for their help on a case they can conduct basic mental status exams and non-official multi-axial assessments. When they partner with attorneys the trained social workers can provide short term counseling and crisis intervention as well as makes referrals for clients with addiction, mental health, domestic violence and homelessness issues. The Client Advocates provide both written and oral advocacy materials on behalf of clients in the courts and in

community agencies. Elspeth Slayter, M.S.W., *An Introduction to the Client Advocate - Attorney Working Partnership at The Bronx Defenders 2-6* (2000) (unpublished report on file with Author and available at the Bronx Defenders).

n122 Marnie E. Rice & Grant T. Harris, *The Treatment of Mentally Disordered Offenders*, 3 PSYCH. PUB. POL. & L. 126 (1997). Particularly for potentially violent clients, there is much controversy over voluntary versus involuntary treatment for the mentally ill. *See, e.g., Kendra's Law, New York Assisted Outpatient Treatment Law*, 5 OMH QUARTERLY at 3 (Dec. 1999) (published by the N.Y. State Office of Mental Health, discussing the sharing of information regarding mental health histories and renewable court orders for outpatient treatment for mental illness or involuntary treatment of the mentally ill). There is much debate on court-ordered care that is involuntary. Laura Parker, *Study Examines Forced Treatment, Report Feeds Debate on Court-Ordered Care for Mentally Ill*, U.S.A. TODAY, Feb. 16, 2001, at 3A.

n123 *See, e.g., Bennett H. Brummer, Anti-Violence Initiative Secondary Community Partnerships* (2000) (report on file with Author; [www.pdmiami.com](http://www.pdmiami.com)). The Miami Dade PD office has several job training and placement programs or links to organizations where they help clients find employment opportunities with organizations such as the Greater Miami Service Corporation, Jobs for Miami, Transition, Inc., Senior Aides Program (run by the Hispanic Community Center of Miami Beach) and the Summer Youth Employment Program.

n124 E-mail correspondence from Bob Boruchowitz, Public Defender, Seattle, Washington (Apr. 10, 2000) (on file with Author). *See also infra* note 124.

n125 When people enter the justice system because they are too poor to pay fines, poverty itself becomes a crime. *See Final Report of the National Symposium on Indigent Defense Systems 2000, Redefining Leadership for Equal Justice, Workshop I: Criminalization of Poverty: Collaborative Strategies to Respond*, Washington, D.C. (June 29, 2000) [hereinafter Final Workshop I Report] (panelists discussing the driver's license problem were Bob Boruchowitz, Judge Mary Yu, Judge Judith Hightower, Fabienne Brooks, Chief in the Sheriff's Office) (published report forthcoming 2001).

The judiciary has begun to play a more vocal role in motivating groups to act collaboratively to address broad systemic problems. For example, in Baltimore, the judiciary was the point of leadership particularly when judges presented the Maryland General Assembly with an implementation plan for the Criminal Justice Coordinating Council, and the previously withheld funds were released. The second National Symposium on Indigent Defense 2000, at Plenary IV (June 30, 2000).

n126 Larry Gossett & Robert C. Boruchowitz, *Reasons to Change City's Impound Law*, SEATTLE POST-INTELLIGENCER, May 2, 2000; Robert C. Boruchowitz & Fred Bonner, *Better Court Practices, Not Impoundment, Have Reduced DWLS*, SEATTLE POST-INTELLIGENCER, Feb. 7, 2001 (discussing that approximately 40% of drivers whose cars are impounded are African American in a city with approximately 11% African American) (*available at* <http://seattlep-i.nwsourc.com/opinion/bonner.html>).

n127 In the spirit of coalition-building, the National Center for State Courts stepped in to share information about a more equitable program to enforce these types of judgments. Final Workshop I Report, *supra* note 125.

n128 The Public Defenders are staffing a program to assist welfare recipients expunge their criminal records or apply for a certificate of rehabilitation to better qualify for jobs. E-mail correspondence from Mark Arnold, Kern County, California Public Defender (Apr. 12, 2000) (on file with Author).

n129 The Kern County PD office continues to pursue expungements for their clients with the hope of removing a barrier to employment. As Mark Arnold states "typically employers put applications reflecting criminal convictions in one stack while the other applications are given more serious consideration." E-mail correspondence from Mark Arnold, Kern County, California Public Defender (Apr. 5, 2001) (on file with Author).

n130 In Kern County, the expungement program has been such a success that the Human Services (Welfare) Department has provided a grant to help with the paperwork. Arnold correspondence, *supra* note 128.

n131 In light of the success of this defender program, the Human Services Department has awarded a grant to assist the program and the Welfare-to-Work program officials have endorsed it. *Id.*

n132 The Sonoma County Public Defender Lou Haffner reports that they have staffed a program to assist welfare recipients with expunging their criminal records or apply for a certificate of rehabilitation to improve job qualifications. The program is run in conjunction with Sonoma County Legal Aid, but only attorneys from the Public Defender's Office conduct the counseling. The program operates in the evenings at the local Legal Aid Office in Santa Rosa, California, and completely depends on volunteer services of the Public Defenders. E-mail correspondence from Lou Haffner, Sonoma

County Public Defender (Apr. 19, 2000) (on file with Author).

n133 E-mail correspondence from Dawn Ryan, Attorney-in-Charge, Kings County Criminal Defense Division of the Legal Aid Society of New York (Apr. 14, 2000) (on file with Author).

n134 *Id.*

n135 *Id.*

n136 Joseph P. Fried, *Court Is Moving Back Into the Neighborhood*, N.Y. TIMES, Oct. 10, 1999, § 1 (Magazine), at 45. The Red Hook Community Justice Center (after a \$5.4 million interior reconstruction) handles cases that would normally be dealt with in three separate courts in downtown Brooklyn: Criminal Court, Family Court and Housing Court. The criminal cases include low-level felonies and misdemeanors such as shoplifting, minor assaults, fare beating, prostitution, vandalism and graffiti, juvenile delinquency and some landlord-tenant disputes. The court hears about 10,000 cases a year. Beyond the court proceedings, the Community Justice Center houses problem-solving programs addressing drug-abuse, provides domestic-violence counseling, job placement and health services in the community. *Id.*

n137 Multi-disciplinary practices are being debated currently within ABA but most are dealing with private law firm and accounting firm multi-disciplinary practice disputes. On-line discussion, *available at* [www.abanet.org/cpr/multicom.html](http://www.abanet.org/cpr/multicom.html).

n138 The debate about how law students are trained in theory versus practice skills has been waging for a long time, and much of the rich discourse can be traced back to the origins of the law clinic movement. *See also* Robert MacCrate, *Legal Education and Professional Development—An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 123-221, A.B.A. SEC. ON LAW SCHOOLS & THE PROF. (1992) [hereinafter MacCrate Report].

n139 Cathy Neidich, M.S.W., *The Role of Social Work in Clinical Legal Education*, Vol. 1. no.2 CLINICAL NOTES, HARV. CRIM. JUST. INST. 14 (Summer 2000).

n140 *Id.* at 15.

n141 *See* Neidich, *supra* note 139 at 15.

n142 *Id.*

n143 Interview with Mary Prosser, Director, CJI and Cathy Neidich, Social Worker, CJI, Cambridge, MA (June 13, 2000).

n144 Neidich, *supra* note 139, at 15. Neidich also says that she tends to see herself as a clinician first and not in the role as community organizer. She has seen her own professional development expand to meet the agenda of building relationships with service providers in the community and the Criminal Justice Institute. She sees more clearly the connections "between direct service work and working to change how we as a society address our children's needs." *Id.*

n145 *See generally* Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship*, 67 *FORDHAM L. REV.* 2123 (1999)

n146 For example, the Internet now provides a virtual space to link holistic advocacy groups that are made up of lawyers, social workers, doctors and other professionals. One of the websites that links these legal advocacy groups, [holisticstrategies@egroups.com](mailto:holisticstrategies@egroups.com), has over 215 subscribers with people representing many fields. *See also* [www.communityjustice.org](http://www.communityjustice.org). *Cf.* Project for the Future of Equal Justice, *available at* [www.equaljustice.org](http://www.equaljustice.org).

n147 *See supra* notes 63-68 and accompanying text.

n148 Minnesota has one of the most strategic and active lobbying operations in the country. Interview with Robert Ellingson, Government Relations Manager, State of Minnesota Board of Public Defense, Minneapolis, Minnesota (July 27, 1999).

n149 *See infra* note 148.

n150 *See* Public Opinion Report *supra* note 6. Defender leaders are also working with other communications firms such as "We Interrupt This Message," a communications firm in San Francisco and New York as well as consulting with academics such as UCLA Professor Justine E. Lewis of "The Persuasive Edge," a California-based communications group that has worked with public defenders from around the country.

n151 The Minnesota Public Defenders are well aware that fine-tuning the message to lawmakers is as critical as the messenger. "You need someone who sincerely embodies the function of the public defender system. You need a team of people with different skills and different functions. As a team, people will be more effective in doing things more consistent with their personalities and beliefs. We overlap on some functions and we all help out when needed; that's why it works. We have systematic approach to lobbying of which most legislators are unaware." Interview with Robert Ellingson, Government Relations Manager, State of Minnesota Board of Public Defense, Minneapolis, Minnesota (July 27, 1999).

n152 E-mail correspondence from Juliana Humphrey, San Diego County Public Defender (Apr. 12, 2000) (on file with Author).

n153 The Vera Institute of Justice's National Defender Leadership Project ("NDLP") has created a national network of defender managers and academics interested in improving communication and leadership skills in the defender community. NDLP has published three pamphlets widely distributed to defenders in an effort to build managerial problem solving skills. *See Ultimate Advocacy: A Defender's Guide to Strategic Management* (NDLP, VERA INST. OF JUST. No.1, 1999) (this is the first publication of an NDLP series that presents a framework defenders can use to tackle an array of management issues. It offers guidance on describing the benefits defender agencies provide to the public, identifying and securing support from the many parties with a stake in effective indigent defense, and finding resources to help defenders accomplish their mission). *See also Ultimate Advocacy: A Defender's Guide to Reflective Practice*, (NDLP, VERA INST. OF JUST. No.2, Jan. 2000) (second of the series offering defender managers practical advice on how to improve their leadership roles in the criminal justice system. This publication presents defender managers with critical thinking methods they can use to reflect on their leadership roles. It encourages them to examine past experiences in order to map out strategies for the future). *See Ultimate Advocacy: A Defender's Guide to Asset-Based Management*, (NDLP, VERA INST. OF JUST. No.3, 2000) (third in series that describes a practical, inventive approach that encourages defenders to focus on the strengths of their clients and their clients' communities. Asset-based management pushes defenders to examine their role in the community and see that by steering clients to community services that help them get back on their feet and lead productive lives, they help prevent additional crime and foster community health.).

n154 EdLaw Project Brochure, Children's Law Center of Massachusetts and YAP, Roxbury, MA 02119 (on file with Author and available through the Youth Advocacy Project).

n155 *Id.*

n156 *Id.*

n157 *See, e.g., Street Law* curricula, which has been taught in kindergartens, grade schools, high schools, prisons, community centers and other venues all over the world. Defense lawyers and staff from defender offices have been instructors and strong supports of *Street Law* programs. For more information about *Street Law* and other legal literacy curricula offered to non-lawyers in the community contact the National Institute for Citizen Education in the Law (NICEL) in Washington, D.C.

n158 E-mail correspondence from Juliana Humphrey, San Diego County Public Defender (Apr. 12, 2000) (on file with Author).

n159 *See* Roger Conner, *Community Oriented Lawyering: An Emerging Approach to Legal Practice*, NAT'L INST. JUST. J., at 27 (Jan. 2000).

n160 *See* Public Policy Report, *Low Level Drug Offenders: Lessons from the Drug Courts*, Campaign for An Effective Crime Policy (Nov. 1994); Mireya Navarro, *Special Courts Use New Tactics In Battle Against Drug Addiction*, N.Y. TIMES, Oct. 17, 1996, at A1. Brooklyn Drug Court (Valerie Raine 718-643-7626; Jamie Fitzgerald 718-643-5446); Kansas City Drug Court (Molly Merrigen 816-881-3113); Miami Drug Court (Ass. Public Defender, Carlos Martinez 305-545-1903); Boston Drug Diversion Court in Mattapan (Vaughn Jeffries 617-298-0402).

n161 The Midtown Community Court was the first of these innovative community courts that are becoming very popular across the nation. The CCI with the Bureau of Justice Assistance has been studying the community impact on crime and disorder. Outcome data from this community court will be invaluable because this community court has been around longer than others.

n162 Laurie Robinson & Jeremy Travis, *Managing Prisoner Reentry For Public Safety*, 12 FED. SENTENCING REP. (Apr./May, 2000) (describing the need for re-entry courts because well over 500,000 state and federal prisoners are

returning to communities per year to a relatively small number of neighborhoods. Nine reentry courts have been launched with Dept of Justice support: California; Colorado; Delaware; Florida; Iowa; Kentucky; New York; Ohio; and West Virginia).

n163 For example, the Chippewa Indians and Grand Traverse Band of Ottawa have started Peacemaker Courts so that tribal members would value a system that was grounded in more indigenous practices. Peacemaking is a non-adversarial, indigenous process of conflict resolution. More information about the Peacemaker Courts can be accessed by contacting Chief Judge Michael Petoskey, Grand Traverse Band of Ottawa and Chippewa Indians in Suttons Bay, Michigan. *Honoring Nations, Tribal Governance Success Stories*, THE HARV. PROJECT ON AM. INDIAN ECON. DEV., at 30-31 (1999) (publication of the John F. Kennedy School of Government). The Navajo Nation has also developed a court system that handles over 9,000 cases per year, which exemplifies the Nation's commitment to self-governance and self-determination. *Id.* at 6-7.

n164 *E.g.*, U.S. Attorney General's Comm. Poverty and the Administration of Federal Criminal Justice 11 (1963) (adversary system necessary to protect basic interests of a free community).

n165 See Richard C. Boldt, *Rehabilitative Punishment and the Drug Court Treatment Movement*, 76 *WASH. U.L.Q.* 1205, 1246-66 (1998).

n166 Telephone interview with James Hennings, Executive Director, Metropolitan Public Defenders Office, Portland, Or. (Apr. 10, 2000).

n167 *Id.*

n168 *Id.*

n169 *Id.*

n170 *Id.* Mike Schrunk, the District Attorney for Multnomah County, Oregon (Portland) sees their drug court with the opt-out period as a win-win situation for the district attorney's office. He has stated that a problem-solving approach reduces recidivism and, with these procedures to protect a defendant, it is most likely one less allegation to be raised at a post-conviction hearing. Interview with Mike Schrunk, participant at the Justice Project, "A Discussion of Problem-Solving Courts," sponsored by the CCI and the DOJ's Office of Justice Programs, Washington, D.C. (Dec. 3, 1999) (initial discussion); Telephone Interview, *id.* (Dec. 20, 1999) (follow-up telephone interview).

n171 Interview with Mark Stephens, Public Defender, Knox County Public Defender Office, Knoxville Tennessee at the first Executive Session on Public Defense (May 1999).

n172 Leaders of the Public Defender Service in Washington, D.C., for example, have been active in creating the new D.C. mental health court, which bodes well for the future of this court. Wallace and other defenders participated in formation and implementation of a problem solving court and noted the importance of their input into the design and operation of the specialized court. Interview with Jo-Ann Wallace, former director of the Public Defender Service of Washington, D.C. (Mar. 30, 2000).

n173 Telephone Interview with Steve Binder, Deputy Public Defender, San Diego, Ca. (Apr. 3, 2000).

n174 *Id.*

n175 *Id.*

n176 *Id.*

n177 Letter from James Hingeley, Public Defender for Albemarle County and the City of Charlottesville, Va. to Author (Mar. 7, 2001). This public defender office also expands the traditional boundaries of the defense role. For example, Albert LaFave, Jr., the sentencing advocate, who has many years of experience as a probation and parole counselor in Charlottesville and as a psychiatric technician in Washington, D.C. Letter from Albert LaFave, Jr. Sentencing Advocate, Office of the Public Defender, March 15, 2001 (letters and documentation of the full array of whole-client, community-centered, problem-solving activities of the office on file with the Author).

n178 Interview with Mr. Leonard Noisette, Director, Neighborhood Defender Service of Harlem, New York (Mar. 3, 1998).

n179 For example, they hear complaints from their clients about racial profiling, constant police sweeps and searches of their young men, and rogue cops like Rampart—the defense community was well-aware of these problems long before the political explosion.

n180 National Symposium on Indigent Defense 2000: Redefining Leadership for Equal Justice, Washington, D.C. (June 29–30, 2000) (published conference report forthcoming Winter 2001).

n181 For example, in Knoxville, Tennessee ten attorneys and one investigator go to teach and mentor at the Boys and Girls Club once a week. Telephone interview with Linda McLaughlin, Knox County PD Office (Apr. 5, 2001). The Bronx Defenders open their doors to working with local schools and run the Bronx Defenders Debate Initiative inside the public defender offices. *See* The Bronx Defenders, *Beyond the Courthouse*, at 12 (annual report 2000–2001 on file with Author and available at the Bronx Defenders). A San Diego Public Defender assists with "Literacy Project" that provides for GED equivalency training as a part of probation. E-mail correspondence from Juliana Humphrey, San Diego Public Defender (Apr. 12, 2000).

n182 E-mail correspondence from Lou Haffner, Public Defender, Sonoma County, CA (Apr. 10, 2000) (on file with Author).

n183 *Id.*

n184 *Id.*

n185 For example, there is a Listserv for lawyers, social workers and many other professionals interested in holistic advocacy, [holisticstrategies@egroups.com](mailto:holisticstrategies@egroups.com). Currently, it has over 215 subscribers. *See also* Community Justice website, *available at* [www.communityjustice.org](http://www.communityjustice.org).

n186 Robert C. Boruchowitz, President, The Washington Defender Association. Boruchowitz organized this one-of-a-kind Racial Disparity Project where defense lawyers who are people of color work with three community members to address racial disparities in the criminal justice system. E-mail correspondence from Bob Boruchowitz (Apr. 10, 2000) (discussing BJA grant to work on the recommendations of the Minority and Justice Commission to confront and modify laws and practices that may disadvantage some groups) (on file with Author).

n187 *Id. See also supra* note 124.

n188 *Id.*

n189 Project members have provided testimony in the legislature on a bill relating to racial profiling. The project has focused on three major areas—education and training, change in the impact of DWLS3 laws, and data concerning racial profiling. In addition, the team is working with the Minority and Justice Commission Implementation Committee to propose changes in the court rule and procedure relating to pre-trial release. There is training for the Washington State Bar Criminal Justice Institute, the Washington Defender Association, NLADA, the ABA juvenile justice summit, the National Asian Pacific American Law Students Association conference, and the Defender Association staff.

n190 E-mail correspondence from Bart Stapert, St. Thomas Community Law Center, New Orleans, La. (Apr. 12, 2000).

n191 For example, Lenny Noisette provided an example at the first ESPD session where he spoke about defenders turning-in clients who have outstanding arrest warrants. The defense lawyers contact other criminal justice officials to help the client move through the process. (ESPD transcript on file with Author).

n192 Interview with Mr. Leonard Noisette, Director, Neighborhood Defender Service of Harlem, NY (Mar. 3, 1998).

n193 Proposal, *Community Based Advocacy for Troubled Children*, Juv. Just. Project of La. (May 2000) (unpublished community outreach project proposal on file with JJPL).

n194 Sociologists and others have engaged in very creative work regarding the wealth of unrecognized assets in so-called poor communities. At Northwestern, John Kretzmann and others have studied and written about these assets for many years. *See* Asset Based Community Development ("ABCD") publications, *supra* note 28.

n195 *See supra* notes 36, 37.

n196 At the Bronx Defenders the offices have been designed to embrace community members from all age groups and

not just those needing legal representation. From the large brightly colored toys placed in the waiting room entrance for client's children to use while their parents meet with their attorney to the community art work that hangs on the walls, the atmosphere is inviting and accepting. Students from Bronx high schools use computer-equipped space set aside for The Bronx Defenders Debate Initiative while others seek out one-on-one tutoring to help with exams, college preparation or to help in them in making choices about life's next steps.

n197 Opened in 1990, NDS is one of several community-based public and privately funded organizations that represent indigent people charged with criminal offenses in a specific geographic community. Today, NDS has eight trial teams that handle approximately 300 cases. With four lawyers on a team each lawyer handles approximately sixty cases. (Those who handle misdemeanors represent more people because misdemeanor arrests have risen due to "quality-of-life" arrests under new policing methods). Noisette reports that in 1999 NDS handled about 3000 cases per year with an average range (for both misdemeanor and felonies) cost about \$800 per case. Perhaps this figure is a bit higher compared to other defender agencies, but experienced defenders recognize the superior representation provided by NDS' full-service and *ongoing* representation. Most importantly, the community highly values its services. Interview with Mr. Leonard Noisette, Director, Neighborhood Defender Service of Harlem, NY (Mar. 13, 2000).

n198 Early investigation often allows finding witnesses who may disappear or become reluctant to get involved as the case gets old. Early investigation preserves fact while memories are fresh; it enables forensic evidence to be gathered and tested separately by independent experts; and, it means that the defense lawyers do not need to rely on facts as described by the police or prosecutor. Early investigation is especially critical with respect to positioning for trial preparation and plea negotiations. It is difficult to give advice to clients about the law based on facts provided by the police or prosecutor; a defense lawyer with her own perception of the facts, based on an investigation at a crime scene, can assess the strength of witness testimony, and is in a much more effective bargaining position. She is also in a better position to try the case if a plea offer is unacceptable. Traditionally, defense lawyers save investigative resources for cases that look likely to go to trial while those that looked like they would be plead-out were not fully investigated. "Investigation should be used to *prevent* cases from going to trial. Trial is important, but it is not the main service the office provides to clients because most cases don't go to trial." David C. Anderson, *Public Defenders in the Neighborhood: A Harlem Law Office Stresses Teamwork, Early Investigation*, NAT'L INST. JUST. 9 (Mar. 1997) (quoting Chris Stone, Director, Vera Inst. of Just., New York, NY).

n199 What makes NDS particularly unique is the multi-disciplinary practice of representing the accused by teams of lawyers and non-lawyers. Team defense combines multi-disciplinary resources to provide full-service representation for the accused. NDS trial teams are composed of one supervising lawyer, staff lawyers, an investigator, and a case administrator. A critical aspect of this team approach is that each trial team is directly supported by a social service team lead by a fully licensed social worker and Master of Social Work ("M.S.W.") interns from Columbia University. The social service team is lawyer-driven in that the lawyers make a direct request for social services. Special computer software and databases are used to track cases, prepare for trials and provide information about alternative dispositions and access to programs.

n200 See Anderson, *supra* note 198.

n201 *Id.*

n202 *Id.*

n203 *Id.*

n204 "Even if never convicted a person can be fired, lose public benefits, forfeit property, or even lose custody of a child as a result of being arrested. The NDS civil team represents clients in three principal area related to their criminal cases: police brutality and misconduct; housing and eviction matters; and family court child protective proceedings." NDS clients and the community have expressed ongoing satisfaction with the NDS approach in extraordinary ways. For example in 1997, when threatened with closure as a result of proposed budget cuts, members of the community organized lobbying efforts and public demonstrations, successfully convincing the city to restore much of the funding. The formation of an interested and committed constituency for a defender office is rather unique. In addition, community members stop into the office for referrals to both social and legal services whether they are current clients or not.

n205 *Making Justice a Reality for Those Farthest From Its Reach*, Neighborhood Defender Service of Harlem, at 2 (Mar. 2000).

n206 Anderson, *supra* note 198.

n207 *Id.* See also Neighborhood Defender Service of Harlem website, available at [www.ndsny.org](http://www.ndsny.org).

n208 Anderson, *supra* note 198.

n209 These education programs are offered in Harlem, Washington Heights and Inwood and include *Conflicts with Cops*, an award winning class that teaches high-schoolers how to manage conflict and diffuse tension in street encounters with police. Tammerlin Drummond, *Coping with Cops, For Minorities, Growing Up Now Means Learning How to Survive the Police*, TIME MAG., Apr. 3, 2000, at 72. Other classes include "Know Your Rights" workshops for youth and even senior citizens about the criminal justice system and ways to deal with occasional crises of life in a heavily policed inner-city and *Street Law*, a legal literacy course taught in a local middle school (this award-winning *Street Law* curriculum is taught worldwide). NDS lawyers and staff initiated a new education program called *Students Taking Action Towards Empowerment ("STATE")* to reduce negative consequences of the criminal justice system on urban youth.

n210 Interview and personal observations, The Bronx Defenders, 890 Grant Ave., Bronx, NY with Robin Steinberg, David Feige, Amy Gallicchio, Elspeth Slayter, and Cristina Canas (Oct. 1, 1999; May 8, 2000).

n211 Anderson, *supra* note 198.

n212 *Id.*

n213 David E. Rovella, *The Best Defense, Rebuilding Clients' Lives to Keep Them from Coming Back*, NAT'L L.J., at A1 (Jan. 31, 2000) (discussing holistic advocacy and specifically the practices inside The Bronx Defenders such as teamwork with social workers, investigators, and lawyers).

n214 *Id.* at A9 (describing the assistance clients receive in finding and staying in an effective drug treatment program, and how the Bronx Defenders representation did not end when the case was closed; the attorney and social worker kept tabs on the client's progress in drug treatment and other parts of his life).

n215 Interview with Robin Steinberg, Director, Bronx Defenders, Bronx, NY (May 8, 2000).

n216 Rovella, *supra* note 213, at A1, A9.

n217 *Id.*

n218 Examples of the community-based activities underway at the Bronx Defenders include:

- 1) Mentor Moot Court and Mock Trial Competitions—formal and informal coaching provided to local high school moot court team which includes access to computer research and informal advice sessions with lawyers and staff.
- 2) The Bronx Defenders' Youth Center for Debate—full time youth outreach coordinator will manage an office for local students to conduct research on-line, use the library, write speeches, moot arguments and exchange ideas on a regular basis inside the Bronx Defender office.
- 3) Justice Fellowships—a ten week program designed for local high school students to learn about the criminal justice system with access to visiting speakers, discussion panels, films, mock trial at a law school clinic, and court visits.
- 4) One-on-One Relationships: Mentoring and Tutoring—many staff have ongoing individual mentoring relationships with youth in the community. Several women at the Bronx Defenders mentor at-risk adolescent girls through the Bronx AIDS Services.
- 5) Summer Youth Employment Project—host to four or five high school students each summer who want exposure to various professions. Last year's group produced a video "Youth Works 5: Building Blocks for the 21st Century."
- 6) In-school Presentations by Defenders—staff members regularly visit Bronx schools to discuss topics such as defense work, criminal justice, or building self-esteem. Defenders and staff collaborate with other community organization (including Walks of Life, Better Bronx for Youth, and Morrisania 10456) to educate children about possible career paths. Bronx Defenders staff members also reach out to students at Rosewood High School, which operates within the Rose M. Singer Detention Center for women and adolescent girls on Rikers Island.
- 7) Collaboration with Faith-Based Organizations—Client advocates work with a local church group, Love Gospel Church, to develop a delinquency prevention program for at-risk youth that the Church plans to propose to funders. Bronx Defenders agreed to be the subject of a faith-based public-education program for television, "Church Alive," to describe the role of the public defender (as The Bronx Defenders see it), as well as to discuss public misconceptions about public defenders in New York City.
- 8) Community Art Exhibitions—The Bronx Defenders hosted two community art shows and receptions. The first exhibited

the work of an artist who uses the Bronx as one of his central subjects while the second exhibited art by Bronx public school children, kicked off by a reception and awards ceremony for children, their families and the community. The children's art exhibition was coordinated by The Bronx Defenders, the Superintendent of Schools and The Bronx Museum of Art.

9) Education Programs for Social Service Providers—Client advocates or social workers regularly conduct workshops designed to educate local social-service providers, including Project Greenhope, The Visiting Nurse Service of New York, Odyssey House, and New Hope Guild, about the criminal court and family court systems.

n219 PDS, for example, provides a daily "duty day" attorney available to the community over the telephone or through walk-in service. The duty day manual has become an invaluable community resources full of contact names, organizations and other services available in the area to assist in problem solving.

n220 Christian Lamar and Kristin Henning, Public Defender Service of Washington, D.C.

n221 The recently opened community-based office of PDS is currently involved in several initiatives that are geared at problem solving for clients and the surrounding community. For example they work with social workers and other specialists to help clients rebuild relationships, address addiction or mental health issues, secure housing, and find gainful employment. PDS also is looking into post-conviction outreach, such as assisting families find their loved ones in the federal system.

n222 PDS leaders have considered extending the concept of client counseling into a community problem-solving model external to traditional criminal court proceedings. This innovation would focus on community mediation. One initiative is a Community Re-entry program that will aid ex-offenders in their transition back into the community. PDS may build a partnership with the D.C. Mediation Center to train PDS staff in mediation techniques and make space available for community mediation sessions.

n223 See Susan P. Sturm, *From Gladiators to Problem-solvers: Connecting Conversations about Women, the Academy, and the Legal Profession*, 4 *DUKE J. GENDER L. & POLY* 119 (1997). "[The] 'gladiator' model of legal education and lawyering celebrates analytical rigor, toughness, and quick thinking. It defines successful performance as fighting to win: an argument, a conflict, or a case." *Id.* at 122 (footnotes omitted).

n224 Telephone interview with James Neuhard (Apr. 3, 2000) and discussion at NLADA conference (Dec. 1, 2000) (notes on file with Author).

n225 *Felony Sentences in State Courts*, BUREAU OF JUST. STAT., DEP'T OF JUST., May 1999, at 1. This newsletter from the Bureau of Justice Statistics reports that since 1988 guilty pleas have remained around 90% of all felony convictions in state courts. Some jurisdictions like New York report that only about one percent of the cases are tried. See also JAMES EDWARD BOLAND, *PLEA BARGAINING AND GUILTY PLEAS* 1.2, 1.7(b) (2d ed. 1982). Important American legal scholars of plea negotiation practices see the past twenty-five years as lost opportunities to reform substantively or restrict American plea bargaining practices, and some experts warn other countries not to follow our path. Albert W. Alschuler, *An Exchange of Concessions*, 142 *NEW L.J.* 937 (1992). See also Menkel-Meadow, *supra* note 48.

n226 While this is not an exact quote, it is a sentiment heard often when interviewing public defenders who are facing budget hearings or seeking more financial support from their state or local governments. Prosecutors, judges, legislators, police and corrections officials sometimes try to ensure defenders stay within their traditional boundaries. Traditional stakeholders critical of community-oriented defense lawyering hold steadfastly to a narrow conception of the defense function. Some traditionalists do not politically, and therefore financially, support defense-initiated community education and treatment because they think that interdisciplinary activities fall outside the boundaries of their state-financed roles. They question whether this is the best way to spend taxpayer dollars when defenders should only ensure the government meets its burden of proof in each criminal case before the court. Opponents might object that social services and state agencies should receive the money directly instead of state-financed lawyers who represent criminals. Without other criminal justice stakeholders' buy-in, these innovative defenders political support and funding could be at risk from hostile politicians—an ongoing struggle for the Neighborhood Defender Service of Harlem per Lenny Noisette, Executive Director. Interview with Mr. Leonard Noisette, Director, Neighborhood Defender Service of Harlem, NY (Mar. 3, 1998). It is clear that defender institutions have to start collecting real data in order to develop political support for these innovative activities and partnerships with social workers.

n227 Telephone Interview with James Neuhard, Director, Michigan State Appellate Defender's Office (Oct. 16, 2000).

n228 As this quiet revolution of community partnerships and problem-solving teamwork spreads, it will be important

for defenders to document their successes such as reduced recidivism or successful mental health treatment for their clients. They must begin to measure outcomes and produce data to continue to find support for institutionalizing these innovations. This will be critical to political sustainability.

n229 Paulino G. Duran, Public Defender County of Sacramento, CA, Remarks at the Department of Justice's National Symposium on Indigent Defense 2000, *Redefining Leadership for Equal Justice*, Workshop E, Future Partners: Coalition Building in the Legal and Lay Communities, Washington, D.C. (June 29–30, 2000).

n230 See, e.g., Jane Fritsch & David Rohde, *Lawyers Often Fail New York's Poor*, N.Y. TIMES, Apr. 8, 2001, at A1; Jane Fritsch & David Rohde, *For the Poor; a Lawyer with 1,600 Clients*, N.Y. TIMES, Apr. 9, 2001, at A1; Jane Fritsch & David Rohde, *For Poor; Appeals Are Luck of the Draw*, N.Y. TIMES, Apr. 10, 2001, at A1. See also Steven Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime But for the Worst Lawyer*, 103 YALE L.J. 1835 (1994).

n231 WALZER, *supra* note 7, at 85. Finally, an important theoretical question should be explored in another article: whether a more narrowly-defined conceptual model for indigent defense institutions better serves the ends of deliberative democratic justice; or whether an expanded community-oriented model should be institutionalized in each state as a way to move us significantly closer to a deliberative democratic system that provides equal justice for all.

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